

1 STATE OF FLORIDA
 2 STATE RETIREMENT COMMISSION
 3 CASE NO. 08-13612-JAX

4
 5 CLOVIS WATSON, JR.,
 6 Petitioner,
 7 Vs.
 8 DEPARTMENT OF MANAGEMENT
 9 SERVICES,
 10 Respondent.

11 _____ /

12 VOLUME I OF II

13 TRANSCRIPT OF PROCEEDINGS
 14
 15 DATE TAKEN: May 19, 2009
 16 TIME: 1:37 to 6:06 p.m.
 17 PLACE: Department of Management Services
 4050 Esplanade Way
 Tallahassee, Florida 32399
 18
 19 BEFORE: STATE RETIREMENT COMMISSION
 20 This cause came on to be heard at the time and
 place aforesaid, when and where the following
 proceedings were reported by:
 21
 22 Reported by:
 23 AUDRA M. SMITH, RPR, Court Reporter
 For the Record Reporting, Inc.
 24 1500 Mahan Drive - Suite 140
 Tallahassee, Florida, 32308
 25

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1 APPAREANCES

2 STATE RETIREMENT COMMISSIONERS:
 3 ALICE MYERS, Chair
 ERNEST DOSTER, Commissioner
 MILLIE SEAY, Commissioner
 5 REPRESENTING THE STATE RETIREMENT COMMISSION:
 6 ANN COCHEU, Legal Adviser
 LEE ANN GUSTAFSON, Legal Adviser
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 21 Also Present: Brandi Tanton, Clerk for the State
 Retirement Commission; Clovis Watson, Jr.; and Joyce
 Morgan

23 * * *

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1 EXHIBITS

2 PETITIONER'S EXHIBITS:			
3 NO.	DESCRIPTION	MARKED	RECEIVED
4 1	FRS Retirement Guide	37	37
5 2	Respondent's Response to Petitioner's First Request for Admissions, 4/13/09	37	37
6 3	Composite Personnel File	37	37
7 4	Employer Contracts '02-'09	37	37
8 5	Summary Final Judgment for Defendants with decision, entered in Alachua County	37	37
9 6	Petitioner's Request to Produce to Respondent and all responses	37	37
10 7	Petitioner's Complaint filed in Leon County Circuit Court	37	37
11 8	and attachments	37	37
12	Video of Petitioner's appointment to city manager	37	(not rec'd)

13 RESPONDENT'S EXHIBITS:

14 NO.	DESCRIPTION	MARKED	RECEIVED
15 1	Excerpt from FRS Employer Handbook Pages 21-22	37	37
16 2	Excerpt from FRS Employer Handbook Pages 16-17	37	37
17 3	Letter from Gib Cooper to Joyce Morgan, dated 11/13/07	37	37
18 4	Respondent's First Request for Admissions, 3/9/09	37	37
19 5	Petitioner's Response to Respondent's First Request	37	37
20 6	for Admissions, 3/17/09	37	37
21 7	Petitioner's Answers to Interrogatories, 12/9/08	37	37
22 8	The City of Alachua organizational chart	37	37
23 9	The City of Alachua City Manager Position Description	37	37
24 10	Performance Evaluations	37	37
25 11	FDLE Global Profile Sheet Affidavit of Separation filed with FDLE, 9/7/07	37	37

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1 E X H I B I T S (Continued)

2 RESPONDENT'S EXHIBITS (Continued):

3 NO.	DESCRIPTION	MARKED	RECEIVED
4 12	Letter from Michael Crews to Clovis Watson, Jr., dated July 18, 2007	37	37
5 13	Letter from Rod Smith to Michael Crews, August 1, 2007	37	37
6 14	Undated letter from Grace Jaye to Rod Smith	37	37
7 15	Letter from Mr. Smith to Ms. Jaye, September 7, 2007	37	37
8 16	Letter from Ms. Jaye to Mr. Smith, September 12, 2007	37	37
9			
10	JOINT EXHIBITS:		
11 1	Summary Final Judgment for Defendants in Case 01-07-CA-824	37	37
12 2	Letter from Mr. Smith to Joyce Morgan, July 17, 2007	37	37
13 3	Letter from Gib Coerper to Joyce Morgan, August 9, 2007	37	37
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1 P R O C E E D I N G S

2 MS. COCHEU: This is a hearing in the case of

3 Clovis Watson, Jr. against the Division of

4 Retirement.

5 This hearing is being held before the State

6 Retirement Commission at the Department of

7 Management Services' offices, 4050 Esplanade Way,

8 Tallahassee, Florida, on May 19, 2009. The court

9 reporter is taking a record of this hearing.

10 My name is Anne Cocheu, and I am the legal

11 adviser to the Commission. To my immediate left is

12 Alice Myers, the chair; and to her left is

13 Commissioner Millie Seay; and on the end is

14 Commissioner Ernest S. Doster.

15 The Petitioner Clovis Watson, Jr. is being

16 represented by Rod Smith, and the Division of

17 Retirement is being represented by Ms. Stevens.

18 This hearing will be conducted as informally

19 as is compatible with justice.

20 Hearsay evidence may be considered, but this

21 Commission may not base a decision entirely on such

22 evidence.

23 Now, we do have a joint response to the

24 prehearing order, and I wondered if either of you

25 have any additional stipulations to bring forward?

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1 It's pretty straightforward: Is he or isn't
2 he eligible?

3 MR. SMITH: Well, actually, if I may, Madame
4 Chair, first as a matter of business, the City of
5 Alachua was on for DOAH hearing, the original
6 petition filed in this case, because this is a
7 removal of someone who was in the system.

8 Because it is a removal case, it was
9 originally filed as a DOAH petition. At that time
10 I represented the City of Alachua and Mr. Watson in
11 a number of affairs filed on behalf of the City and
12 Mr. Watson.

13 But for reasons which will become abundantly
14 clear during the course of this proceeding, it
15 became important that the City had their own
16 attorney participate as to their -- they have an
17 actual separate interest in the outcome of this,
18 and so I would first ask that the City of Alachua,
19 as an interested party, be granted status in this
20 case as they were the Petitioner in the original
21 DOAH case with Clovis Watson, Jr. as to the
22 removal.

23 MS. COCHEU: Yes. That was going to be a
24 question I was going to get to because obviously we
25 know that the City has an interest in it, and there

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1 was not a request to intervene, but now I
2 understand why there wasn't.

3 Madame chair, I see no reason --

4 CHAIRPERSON MYERS: Why we can't.

5 MS. COCHEU: They got a dog in this race.

6 CHAIRPERSON MYERS: I'm beginning to think the
7 more the merrier.

8 MR. SMITH: Madame Chair, as a second matter
9 of business, although this is not my first rodeo,
10 it is my first rodeo in front of this Commission,
11 and I want to make sure I understand the record the
12 Commission has in front of it so far.

13 MS. COCHEU: I'm about ready to read through
14 it.

15 MR. SMITH: I know there's a lot of documents
16 that have been filed, there's going to be a bunch
17 more documents filed, but I just want to make sure
18 because I think -- I don't want to speak for
19 Ms. Stevens, but I think we're both in agreement
20 this might get reviewed somewhere else at some
21 point in time, and I want to make sure we have the
22 record in front of this Commission, and ultimately
23 for any court on review.

24 MS. COCHEU: My next line was going to be all
25 Commission members present have been furnished

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1 copies of the documents that have been submitted to
 2 the Commission which may be relevant to this
 3 hearing.

4 These documents constitute the Commission's
 5 file to date, and we will review them now: I
 6 understand for the Petitioner's Number 1 is the FRS
 7 Retirement Guide for Senior Management Service
 8 Class and Special Risk Class, the 2006 edition.

9 Number 2 is --

10 MR. SMITH: Excuse me, if I could, I just want
 11 to clarify, we are in agreement that the 2006
 12 edition was the last published edition that the
 13 City had?

14 MS. STEVENS: That is correct.

15 MR. SMITH: I just want to make sure. We're
 16 agreeing that the 2006 language is the language
 17 that was controlling at the time of the decision?

18 MS. STEVENS: We agree that the 2006 language
 19 is the language that's in effect now. We do not
 20 stipulate as to whether that was the same language
 21 that was available to the Petitioner any time prior
 22 to 2006.

23 MR. SMITH: That's not my --

24 MS. COCHEU: Folks, all I'm doing right now is
 25 reviewing what the documents are, and then I will

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1 MS. COCHEU: We received a disk on that.

2 CHAIRPERSON MYERS: Our clerk said she tried
 3 to view it and couldn't.

4 MR. SMITH: I had advised counsel that I did
 5 not anticipate we would use it. I sent it as a
 6 back-up position. I've got all the principals
 7 here, so I'm not going to play that; so I'll
 8 withdraw that as an exhibit.

9 MS. COCHEU: Okay. We have for Petitioner --
 10 Respondent's Number 1 is Petitioner's Answers to
 11 Interrogatories, dated December of 2008.

12 Number 2 is a certified copy of the final --
 13 of the summary final judgment for defendants in the
 14 circuit court case.

15 Number 4 is the response -- Petitioner's
 16 Response to Respondent's First Request for
 17 Admissions.

18 MS. STEVENS: I think you skipped Number 3
 19 and Number 4.

20 MS. COCHEU: I'm taking it from two different
 21 places because it's rather confusing because the
 22 cover sheet is not exactly identical to what's in
 23 here; so I wanted to get this stuff first.

24 Then we have from the joint response --
 25 We have Respondent's -- I guess that would be

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10

12

1 ask you if you have any objections or any comments
 2 on them because that way -- we need to know what's
 3 in the record first, and then figure out what the
 4 significance is.

5 Okay. We have as Number 2 is Chapter 1 of the
 6 FRS Employer Handbook.

7 Number 3 is a composite of the Petitioner's
 8 personnel file.

9 Number 4 is all employment contracts between
 10 the Petitioner and the City of Alachua from June
 11 2002 up to including April 2009.

12 Number 5 is another composite. It's a Summary
 13 Final Judgment for Defendants entered in Alachua
 14 County Circuit Court with a decision from the
 15 Appellate Court on the appeal of said summary final
 16 judgment.

17 Number 6, Petitioner's Request to Produce to
 18 Respondent and all responses thereto.

19 Number 7 is Petitioner's Complaint filed in
 20 Leon County Circuit Court with all attachments. We
 21 received -- I'm not sure -- a video of Petitioner's
 22 appointment to the City Manager position.

23 Was that the disk?

24 CHAIRPERSON MYERS: That was given to us this
 25 morning.

1 4.
 2 -- is an excerpt from the FRS Employee
 3 Handbook, Pages 1 through 21 [sic] dated April
 4 2009.

5 Number 2 is an excerpt from the FRS Employer
 6 Handbook, Pages 16 and 17, dated February 2009.

7 Number 3 is a letter from Gib -- I'm going to
 8 mispronounce his name, but I'll spell it --
 9 C-O-E-R-P-E-R to Joyce Morgan, dated November 13,
 10 2007.

11 Respondent's First Request for Admissions,
 12 dated March 9, 2009. Already done the
 13 interrogatories.

14 The next one is the City of Alachua
 15 organizational chart.

16 The next one is the City of Alachua City
 17 Manager Position Description.

18 Next is Petitioner's City of Alachua
 19 Performance Evaluations completed while Petitioner
 20 was City Manager.

21 Next one is the current FDLE Global Profile
 22 Sheet for Petitioner.

23 Next one is the Affidavit of Separation filed
 24 with FDLE for the City of Alachua for Petitioner
 25 with a cover letter, dated September 7, 2007.

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1 Next is a letter from Michael Crews to Clovis
2 Watson, Jr., dated July 18, 2007.

3 Next is a letter from Rod Smith to Michael
4 Crews, dated August 1, 2007.

5 The next one is an undated letter from Grace
6 Jaye. That's J-a-y-e to Rod Smith.

7 The next one is a letter from Mr. Smith to
8 Ms. Jaye, dated September 7, 2007.

9 The next one is a letter from Ms. Jaye to
10 Mr. Smith, dated September 12, 2007.

11 We have joint exhibits of Summary Final
12 Judgment for Defendants in Case 01-07-CA-824.

13 The next one is a letter from Mr. Smith to
14 Joyce Morgan, dated July 17, 2007.

15 And the last one is a letter from Gib Coerper
16 to Joyce Morgan, dated August 9, 2007.

17 Now, I'm sure there are other things. I'll go
18 with you first, Mr. Smith. Were there other
19 exhibits?

20 MR. SMITH: Actually there are other
21 documents, and I want to find out the status on
22 those, and then maybe I'll know how to do this.

23 There has been -- there was a motion for
24 summary final order. There was a response to the
25 motion for --

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1 raised estoppel from the original petition on, and
2 the first time was in a late-filed response from
3 Ms. Stevens in which she said, Our answer is you
4 can't use estoppel because we didn't know.

5 Well, we have documents that will prove -- and
6 do prove -- that of course they knew or certainly
7 should have known since he was submitting documents
8 on behalf of the City bringing employees back into
9 FRS under the title "City Manager."

10 MS. STEVENS: Just so I may clarify, my
11 response was not that they cannot claim estoppel
12 because we didn't know. My response is they cannot
13 claim estoppel because they don't meet any of the
14 elements. There was no representation by the
15 Division that they relied on to their detriment.
16 Nothing. No representation by the Division. They
17 did not rely on anything that we said to their
18 detriment because we didn't even know about it for
19 years after he became the City Manager. He became
20 the City Manager in 2002.

21 The letter that they sent to us is an
22 ordinance where all he did was sign his name over
23 City Manager, and that's supposed to notify us that
24 he's in Special Risk and a City Manager at the same
25 time.

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1 MS. COCHEU: We're not there yet.

2 MR. SMITH: If I may, there were attachments
3 to those documents, which if those are not in the
4 record, then at the appropriate time I want to move
5 those into the record.

6 MS. STEVENS: Madame Chair, I would object to
7 any of those documents being admitted in evidence.
8 We didn't -- if there are any documents that we did
9 not receive prior to -- 15 days prior to the
10 hearing, you haven't had those documents before
11 you, you just got them, I believe this morning, and
12 a response to my response to his response to my
13 motion filed less than 24 hours prior to the
14 hearing, they should not be admitted.

15 MR. SMITH: Madame Chair, if I may respond to
16 that. Actually the rules we were given is you
17 weren't supposed to file anything within 11 days of
18 the hearing. They chose to file a motion in which
19 they, for the first time, took the position that
20 they didn't know that he was the City Manager, and
21 therefore, I couldn't raise an estoppel argument.

22 Based on that, I've attached documents showing
23 that of course they knew he was the City Manager.
24 They certainly knew it as early as 2004. Those
25 documents are germane to this hearing. I have

1 It absolutely does not do that. It was not
2 sent to enrollment. It was not sent to individuals
3 who would determine whether a Special Risk member
4 is eligible for the Senior Management Service Class
5 membership or vice versa.

6 MS. COCHEU: Let me go back to my original
7 question: Of the documents that I read out, are
8 there any objections to their admission? Not the
9 stuff you guys just brought up.

10 MR. SMITH: No.

11 MS. COCHEU: Okay. Let's get through step
12 one.

13 MS. STEVENS: Yes, ma'am.

14 MS. COCHEU: The next one is --

15 MS. STEVENS: Yes, ma'am, there are some
16 objections.

17 MS. COCHEU: Let's identify.

18 MS. STEVENS: Sure. In Composite Exhibit 3,
19 he filed the entire employment file. There are
20 specific documents in there that we believe should
21 be excluded from evidence.

22 The issue here today is whether the Petitioner
23 is eligible for Special Risk while a city manager.
24 His employment records predating his time as a city
25 manager don't matter. What he did before he was a

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1 city manager doesn't matter. It doesn't matter
 2 that he received a recognition letter from the
 3 senior cha-chas. It doesn't matter. Anything
 4 predating June or August of 2002 is completely
 5 irrelevant to this case.

6 There are also a number of certificates
 7 predating his employment as City Manager. Those
 8 also have no relevance on whether as a matter of
 9 law he's eligible for Special Risk benefits while
 10 employed as a city manager.

11 There are also -- I'm sorry. This is still
 12 Composite 3. That's why I'm still talking about
 13 it. There is also an FDLE Officer Profile Sheet,
 14 dated August 16, 2004 and March 3, 2005. These
 15 Officer Profile Sheets are irrelevant.

16 We have filed the current officer profile
 17 sheet; however, after March 3, 2005, the last FDLE
 18 Officer Profile Sheet, there was a substantial
 19 change because up to that point he had been
 20 reported as a law enforcement officer to FDLE, so
 21 of course it shows him as active law enforcement
 22 with active certification.

23 Well, after that date, Alachua Police
 24 Department filed an Affidavit of Separation with
 25 FDLE separating him from his employment as a law

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1 enforcement officer. Those officer reports are
 2 outdated. They have nothing to do with this case.

3 Those are my objections to Composite 3, if
 4 you'd like to me to proceed?

5 MR. SMITH: First of all, almost every one of
 6 those arguments goes to weight not relevance.

7 Second of all, anything he did after 1983 is
 8 germane because this case is about who knew what
 9 and why decisions were made at the time they were
 10 made; so the fact that subsequent decisions were
 11 made that may very well have given us information
 12 that weren't -- that didn't previously exist and
 13 wasn't being acted on by the City or the
 14 Petitioner, at the time that those decisions were
 15 being made, that's relevant for this Commission.

16 And we're going to have lots of testimony in
 17 here why he became the City Manager, the
 18 circumstances, the reason those contracts were
 19 entered, the beliefs that everybody held at the
 20 time based on records that existed at that time.
 21 She can argue relevance. They're plainly relevant.
 22 Whether or not what weight you give them, that will
 23 be for the Commissioners to make their decision
 24 regarding, but I don't think there's any argument
 25 that the relevance of his -- that there is not

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1 relevance of all the documents in his career. Some
 2 of which, admittedly what I didn't want to do is go
 3 through and start redacting anything out of there,
 4 and then be facing an argument; so I didn't even
 5 redact numbers I normally redact because I
 6 submitted the entire the personnel file.

7 Her argument goes to weight, not relevance.
 8 It should be admitted for whatever weight this
 9 Commission decides to give it.

10 To the degree it's hearsay, this Commission
 11 can make decisions based on hearsay, they just
 12 can't be the exclusive basis for the finding of
 13 fact -- the records in front of you -- and it
 14 should be something we consider, particularly when
 15 the final argument we're going to raise and the
 16 most compelling argument is about the equities of
 17 what -- the fairness of what's happened here,
 18 something this court -- this Commission has
 19 specifically allowed in the past and addressed in
 20 the past, and you need the entire picture to
 21 understand what people believe and why they believe
 22 it at the time.

23 MS. COCHEU: Madame Chair, I know from this
 24 morning's concern that you had a cherry picking of
 25 pieces and parts, I know that none of the

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1 Commissioners particularly liked seeing a file like
 2 this, but apparently Mr. Smith is making the
 3 representation that it's the complete file.

4 And, yeah, there's probably some "I'm a great
 5 guy" stuff in there, but I know you-all can pick
 6 through that.

7 CHAIRPERSON MYERS: I think it was all filed,
 8 so we've all had the file for a short time, and I
 9 went through and picked out what I thought was
 10 relevant, and I just glanced through the rest of it
 11 to see -- to make sure I picked out what I felt was
 12 going to help me make my decision on this, and I'm
 13 sure that the other Commissioners have done the
 14 same thing.

15 MS. COCHEU: Unfortunately, you know, these
 16 were not paginated. It would have been a whole lot
 17 easier to say, Pages "ta-da" are not relevant.

18 But having said that, do you have any remarks
 19 now, Ms. Stevens?

20 MS. STEVENS: As I said, as you're going
 21 through your file, I know that he's submitted the
 22 entire employment file. But as you're going
 23 through the file, keep in mind that we're here to
 24 decide whether he, as a city manager under the
 25 Senior Management Service Class statute and Special

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1 Risk statute, is eligible for Special Risk Class
2 membership; so --

3 CHAIRPERSON MYERS: We understand that.
4 MR. SMITH: I want to respond to that because
5 I want you to go back and find the original
6 petition which is filed, the subsequent petition
7 which we filed after they finally -- after several
8 letters -- gave me what they call "final agency
9 action."

10 Our position has been from the outset that the
11 question here is whether or not he was properly
12 removed from this class of Special Risk which is
13 what we're really here about; the removal, whether
14 or not that can be sustained; and the burden is on
15 them to sustain it; and if it is otherwise
16 sustainable, whether or not there are equities that
17 ought to come into play in this particular case.
18 That's the issue in front of this Commission.

19 This Commission understands -- you do this all
20 the time -- you understand what we're doing. If I
21 had gone through and taken this -- and redacted
22 anything, somebody would say, "It was not a
23 complete record."

24 So I said, "Don't even redact the Social
25 Security number. Give me the file just as you have

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1 my objections to his exhibits depend on whether
2 that's going to be an issue that you actually hear,
3 and I would like to present our interpretation of
4 the statutes regarding the plan code correction.

5 MS. COCHEU: All right.
6 MR. SMITH: I thought right now we're going
7 through trying to get the exhibits in order.

8 MS. COCHEU: Yeah.
9 MR. SMITH: I don't understand how we're
10 having argument --

11 MS. STEVENS: And, sir, that's what we're
12 trying to do, but I cannot --

13 MR. SMITH: Madame Chair, normally, when I
14 have the floor --

15 MS. STEVENS: Excuse me.

16 MR. SMITH: -- I finish the floor, and then
17 the other side gets it. Now, I'm not going to
18 stand here and be interrupted.

19 MS. STEVENS: I'm sorry. I was speaking to
20 you and you interrupted me.

21 CHAIRPERSON MYERS: Well, I think you
22 interrupted her.

23 MR. SMITH: I thought she had stopped. I
24 apologize for that.

25 MS. GUSTAFSON: Perhaps we should go ahead and

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1 it." I have the clerk here if we needed to certify
2 it.

3 MS. STEVENS: Before we proceed, I do have
4 other objections, but they're based on an issue
5 that's still pending: Whether the plan code
6 correction is actually an issue before this
7 Commission; so I don't know if we need to take it
8 up at this time, otherwise my next objections will
9 depend on your decision on that matter.

10 MS. COCHEU: All right. In response to
11 Mr. Smith's -- one of his remarks, I think you-all
12 know that the petition that is in this file that
13 triggered this file opening up was "I was
14 wrongfully removed from Special Risk Class by the
15 Division of Retirement from September 2002
16 forward."

17 The petition was received in the clerk's
18 office on December 4, 2007. Everybody here
19 understands that's what triggered this; so we're
20 all clear on that.

21 Now, the next issues that you have with some
22 of the exhibits, Ms. Stevens.

23 MS. STEVENS: Ma'am, as I just stated, I would
24 like to clarify the issue of whether the changing
25 of the plan code is the issue because the rest of

1 remember that this is a quasi-judicial body, and
2 you should probably let the chair run the meeting
3 instead of you.

4 MS. COCHEU: All right. Now, I understand
5 your concern is -- depending on how the Commission
6 rules -- you may have some objections to other
7 documents, and that's what we were on.

8 MS. STEVENS: Yes, ma'am.

9 MS. COCHEU: Okay. What would your objections
10 be?

11 MS. STEVENS: What would they be depends on
12 how the Commission --

13 MS. COCHEU: Yes. Yes. Let's try that tact.

14 MS. STEVENS: Composite 6. We would object to
15 the 3/31/2008 letter from Mr. Smith to Matt Minnow.
16 It involves the circuit court complaint which has
17 nothing to do with the merits of this case.

18 MS. COCHEU: What else?

19 MS. STEVENS: The October 16, 2002 letter from
20 Mr. Smith to Joyce Morgan at the Division. Again
21 it's regarding the actual removal process, not
22 whether he's entitled to Special Risk, but the
23 process and him not immediately receiving a final
24 agency action letter, and it has nothing to do with
25 the merits of whether he's entitled to Special Risk

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1 membership.

2 MS. COCHEU: I thought it might. I think it
3 might.

4 COMMISSIONER SEAY: That was wrongfully
5 issued.

6 MS. STEVENS: The issue before this Commission
7 -- the issue depends on the letter that was written
8 by the administrator. Sarahbeth Snuggs, the
9 Director of the Division, wrote a letter to
10 Mr. Watson that he was not entitled to inclusion in
11 the Special Risk Class membership. We are not
12 talking about the process in which he was removed.

13 It was -- I guess you could term it as "a
14 removal," but it's not -- it's not the actual steps
15 that the Division took. It's his entitlement to
16 the senior -- or to the Special Risk Class.

17 The Special Risk statute says that if the
18 Division does not designate a member as Special
19 Risk, which is what happened in this class, I'm
20 sorry, in this case -- the member may appeal to the
21 Commission for designation as a Special Risk
22 member. We are here to determine whether he is
23 eligible for Special Risk while employed as a city
24 manager.

25 In 121.23, which details the jurisdiction of

1 on going, because we're never going to get to the
2 hearing because you guys will argue for the next
3 three hours. Maybe that's what we got to do.

4 MS. STEVENS: I'm sorry. What was the last
5 objection that I had made to --

6 Madame Court Reporter?

7 COMMISSIONER SEAY: The removal process.

8 MS. STEVENS: Also, the October 26, 2007
9 letter from Rod Smith to Larry Scott. It's again
10 remarking only the process, not whether he's
11 entitled to the class or not, but only the process.

12 The November 7, 2007 letter from Rod Smith to
13 Joyce Morgan at the Division. There are actually
14 two of these, and it's regarding, like I said, only
15 the process, not his entitlement.

16 The November 16, 2007 letter from Gib Coerper
17 to Governor Crist. We said that it's irrelevant,
18 he's listed as a witness, and he can testify to
19 anything he wants to testify to if he wants to.

20 CHAIRPERSON MYERS: Mr. Smith, let's hear what
21 you have to say.

22 MR. SMITH: Fortunately much of this record is
23 already in front of you in the circuit court case.
24 What occurred was he was notified -- the City was
25 notified that he had been removed from Special

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1 the Commission, it says, "It is limited to the
2 final decision of the administrator on the merits."
3 Excuse me. The merits of this case are whether
4 he's entitled to Special Risk Class membership
5 while employed as City Manager. That is why there
6 was a plan code correction and he was effectively
7 placed in the Senior Management Service Class.

8 Now, subject matter jurisdiction arises only
9 by virtue of law. It can't be agreed on between
10 the parties, "Oh, well, you promised this could
11 happen or this happened." That doesn't matter.
12 Your jurisdiction is based only on what it says in
13 the statutes and what it says in the Constitution.

14 As it pertains to Special Risk, you can decide
15 whether someone should be designated as a Special
16 Risk member. That's it. But let's talk for a
17 second maybe --

18 MS. COCHEU: No, hold on. We're not getting
19 into a little argument here. You recognize -- we
20 recognize up here that this is a determination on
21 the Special Risk, and it may well be that there are
22 factors surrounding this whole issue that may or
23 may not be of concern to the Commissioners when
24 they're deliberating; so without going into a
25 complete argument, just make your record and keep

1 Risk.

2 We filed a timely DOAH request that he be
3 given a hearing on his removal. They responded --
4 and you have it in front of you -- saying that the
5 request is premature. We haven't made a final
6 action.

7 Now, he was removed retroactive to 2002
8 effective June of -- at that time effective
9 September of 2007.

10 When a month passed and we hadn't heard a
11 response, you bet I followed up with a letter
12 saying, "I haven't gotten a final agency action,
13 but I want to reiterate I want this transferred
14 over to DOAH for my hearing on his removal."

15 I did another letter approximately 10 days
16 later, at which time I then received -- and you
17 have it in front of you, and this is why you need
18 this entire record and so does the Court on appeal.

19 Then we get an answer saying we have a final
20 agency action, and the final agency action is to
21 disallow his -- to declare that position not to be
22 eligible, which I had sent a letter -- and the
23 letter to Joyce Morgan makes it very clear -- we're
24 delaying having an application on this issue until
25 we understand whether he was correctly removed

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1 under the circumstances of this case, and I filed
 2 an amended petition for a DOAH hearing, and then I
 3 filed a request for a hearing in front of this
 4 organization -- this Commission -- and in that I
 5 said the issue was I was, quote, wrongfully
 6 terminated from my -- removed, excuse me, from my
 7 position.

8 This record is clear that what we're here
 9 about is -- it's inextricably intertwined. But the
 10 real question that got us here is whether or not he
 11 was correctly removed, whether he was properly
 12 removed, the process of removal -- I don't know
 13 what the process of removal is. It's you're either
 14 removed or you're still in.

15 He was removed because the money was sent
 16 back, and we didn't accept it. All that's going to
 17 come in front of you -- and this record is plainly
 18 a record that the Court of Appeals needs to
 19 understand the complexity of -- and I would like to
 20 add that in my motion that I filed -- my response
 21 that I filed with you yesterday, I included
 22 Mr. Scott's and Mr. Button's response to the
 23 circuit court case in which they said, "You don't
 24 need to do this. We're going to give you a full
 25 hearing on these issues in front of the State

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1 Retirement Commission, and therefore the State
 2 Retirement Commission is where you need to be."

3 Now, that's in their response by their motion
 4 to dismiss my action for declaratory. They also
 5 filed a motion with DOAH -- Mr. Button on behalf of
 6 the Division -- in which Mr. Button said to DOAH
 7 that essentially you don't need to have a hearing
 8 because now the issue's going to be in front of the
 9 State.

10 Now, if she's right and we're not hear about
 11 removal, then I should be in front of a DOAH
 12 hearing officer, and that should have happened two
 13 years ago.

14 If they're right, the Department's previous
 15 position which is that I should be here, I'm here,
 16 I have my witnesses, but I want a full record of
 17 how we got here, why this has taken two years to
 18 get here, and it is clearly appropriate that I got
 19 an answer in which their response to my question of
 20 "What about his removal" is we've declared that
 21 position not to be eligible.

22 That doesn't even respond, I submit to you, to
 23 the original question, but assuming that they're
 24 inextricably intertwined, it all should be in front
 25 of you for a complete record for the decision we're

1 going to ask for you to make today.

2 MS. COCHEU: Madame Chair, you make the big
 3 bucks.

4 CHAIRPERSON MYERS: I should live so long.
 5 I really, truly think -- and I think Elizabeth
 6 knows well enough -- that we are going to pick out
 7 what's relevant and what isn't relevant when we go
 8 through these when we read these.

9 We're here to see if he was dismissed from
 10 Special Risk, and if the process they did it was
 11 proper, and so those are things we're going to do;
 12 so this is just merely giving us a little
 13 background information on what was going on which
 14 isn't -- we'll weigh it for what it's worth, okay?

15 MS. STEVENS: As long as my objection is noted
 16 on the record. I appreciate it.

17 CHAIRPERSON MYERS: I understand, and we do.
 18 COMMISSIONER SEAY: Madame Chairman, I'm a
 19 little confused here. I need to clarify.

20 So is it our job to determine whether or not
 21 the process to get him to dismissal, is that our
 22 role?

23 MS. COCHEU: No. Really your role is whether
 24 or not he was properly or improperly placed and
 25 removed --

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1 COMMISSIONER SEAY: We have the authority to
 2 do that?

3 MS. COCHEU: Yeah. And I think part of the
 4 argument, obviously is process motivated in it.

5 COMMISSIONER SEAY: To get to a decision.

6 MS. COCHEU: Right, to get to the ultimate
 7 issue that you guys got to determine.

8 COMMISSIONER SEAY: Okay.

9 MS. COCHEU: Now, Ms. Stevens, were there any
 10 other objections to the documents that Petitioner
 11 has proposed?

12 MS. STEVENS: Yes, ma'am. Just for the
 13 record, this would be the same objection as I had
 14 been raising, the circuit court complaint with all
 15 the exhibits, I'd just like to have it noted on the
 16 record I would object to any of those documents in
 17 evidence.

18 MS. COCHEU: All right. Mr. Smith, are there
 19 any documents that the Respondent has proposed to
 20 which you have an objection?

21 MR. SMITH: No, I think some of them actually
 22 -- as I was going through, I think some of them may
 23 be duplicative, but I'm not going to go back. It's
 24 fine. I think a couple of letters she's put in are
 25 actually attached. I don't care. I have no

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1 objection to what they want to put in.

2 MS. COCHEU: Now, at this point I have not
3 asked the City of Alachua what its position is?

4 MR. RUDE: Essentially Mr. Smith is setting
5 forth the positions for the City of Alachua. The
6 one question that I would raise, which again goes
7 to the argument that Ms. Stevens made, is if we
8 cannot get the decision of whether he was properly
9 removed from this Commission -- which is the
10 original petition, the original everything that was
11 filed -- then we need to go back to where it was
12 which was DOAH, which in the cases I've read
13 there's a recommendation that goes back up to this
14 Commission again.

15 So it seems to me we're going to get to the
16 same place, but we just want to make sure on the
17 record that what was petitioned and what was asked
18 for is a hearing on the wrongful removal without
19 any notice, without any opportunity to be heard,
20 just to plain get a letter that says, "This is it,"
21 and that letter also said, "You should file for a
22 DOAH hearing." That's the letter that we received
23 from DMS.

24 So I just wanted to make that clear, but
25 otherwise the City is adopting, just for the

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1 record, so we can have it a little more smooth
2 sailing -- that we are adopting the arguments being
3 presented by Mr. Smith.

4 MS. COCHEU: Thank you. Now, the other issue
5 with respect to documents concerns the materials
6 that we just received: Petitioner's Reply
7 Memorandum to Respondent's Response to Objection,
8 and there were some attachments thereto that came
9 up for objection.

10 Ms. Stevens, would you like to weigh in on
11 that?

12 MS. STEVENS: Normally, I would object to such
13 a late filing, but, no, I don't have any objection
14 in this case. It didn't say anything profound so
15 it's fine.

16 MS. COCHEU: Have the Commission members had
17 an opportunity to review that? It's a six-page
18 pleading with attachments.

19 COMMISSIONER SEAY: Can you please repeat what
20 you're referring to?

21 MS. COCHEU: The Petitioner's Reply Memorandum
22 to Respondent's Response to Objection that we
23 received this morning. I will show you.

24 COMMISSIONER SEAY: I got it.

25 MS. COCHEU: I wanted to make sure you have

1 it. Brandi, you left copies.

2 COMMISSION CLERK TANTON: I gave you and Alice
3 a copy because I just got it.

4 MS. COCHEU: You have the faxed one, and I got
5 the hard copy for the file. I got the original.

6 CHAIRPERSON MYERS: We haven't really read
7 through this.

8 MS. COCHEU: I think this is probably the
9 appropriate time to bring this up. Given that
10 there are a substantial number of exhibits and I
11 believe there will be a number of witnesses,
12 sometimes with these bigger cases, the Commission
13 does not deliberate at the time; that they would
14 want to probably have some time to digest the
15 matters and would request a proposed recommended
16 order from the parties.

17 Would that be the pleasure of the Commission?

18 COMMISSIONER DOSTER: That sounds good.

19 CHAIRPERSON MYERS: I would think so because
20 we got -- this, as I say, was given to me this
21 morning; so we had a full schedule this morning as
22 you know, and we have had no opportunity to read
23 this, but we can hear everybody and everything and
24 take notes and then --

25 MS. COCHEU: Get a transcript.

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1 CHAIRPERSON MYERS: -- get a transcript, and
2 you can write your closing, and we can read those,
3 and we can notify you of our decision, or you can
4 be present when we make the decision if you want
5 to.

6 MS. COCHEU: Yeah. I think that because there
7 are interested parties who are likely to have this
8 on appeal, that to give everybody a fair shot, I
9 think they're going to need to digest this stuff.

10 MS. STEVENS: Just for clarification, Madame
11 Chair, did you say that we would be writing our
12 closing?

13 MS. GUSTAFSON: Proposed recommended order.

14 MS. STEVENS: Proposed recommended order.
15 Okay.

16 MS. COCHEU: You can obviously make an
17 argument, but in terms of them looking at this page
18 and that page and all, it's going to take them a
19 long time to assemble it.

20 CHAIRPERSON MYERS: What do we have coming up?
21 Where are we?

22 MS. COCHEU: Any other -- I guess, the
23 question is any other exhibits that we don't have
24 before us that I haven't mentioned.

25 MR. SMITH: Give me just a second.

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1 MS. COCHEU: Because the next thing is the
2 witnesses. We need to ID them.

3 COMMISSIONER SEAY: We've gone through all the 3
4 exhibits so far, so we hold on to everything?

5 MS. COCHEU: Yeah.

6 COMMISSIONER SEAY: We're going to need a copy 6
7 of this?

8 MS. COCHEU: Brandi, can you make copies for 8
9 everybody?

10 (Petitioner's, Respondent's and Composite
11 Exhibits were identified and received into the
12 record.)

13 MR. SMITH: I think that that constitutes --
14 as I bring up witnesses, I have files for them. If
15 I have something, obviously I'll show it, but I
16 don't think I have anything that's been listed, and
17 I think everything we listed has been placed in
18 front of you already.

19 MS. STEVENS: All right. We do not have
20 anything else.

21 MS. COCHEU: Okay. Each party should be given
22 an opportunity to make an opening and closing
23 statement. The Petitioner should make his
24 presentation first and then the Respondent.

25 The parties shall have an opportunity to

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1 Bonnie Burgess. I also have Jean Calderwood and
2 Gib Coerper here. There are three commissioners
3 that I don't know that I will call. I don't know
4 that I need to put on all three commissioners.

5 MS. COCHEU: Ms. Stevens?

6 MS. STEVENS: Joyce Morgan from the Division,
7 and Terry Baker from FDLE.

8 MS. COCHEU: Would all of those people whose
9 names that were mentioned by the counsel please
10 stand and raise your right hand so our court
11 reporter can swear you in.

12 (The witnesses were sworn.)

13 MS. COCHEU: Now, does either party wish to
14 invoke the rule of excluding witnesses?

15 MS. STEVENS: Yes, ma'am.

16 MR. SMITH: Yes, ma'am.

17 MS. COCHEU: All right. Now, we've got to
18 find a place for these folks.

19 CHAIRPERSON MYERS: There is a library out
20 there.

21 MS. COCHEU: Okay. Because I didn't want them
22 just sitting in the hall.

23 All right. Ladies and gentlemen, the rule of
24 exclusion has been invoked. That means that you
25 will not be allowed in the hearing room until your

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1 respond to all evidence and testimony, including
2 cross-examination of witnesses, and the
3 introduction of rebuttal evidence is permissible.

4 Each party shall make a closing argument and
5 the Petitioner -- well, actually each party should
6 be making a closing argument in addition to
7 submitting a proposed recommended order which can
8 include more argument on facts, the evidence, and
9 the law to be applied.

10 This hearing is being conducted to determine
11 whether or not Mr. Watson is entitled to Special
12 Risk membership. Only testimony and evidence
13 relevant to issues in the hearing will be allowed.
14 Testimony or evidence which is repetitive or
15 cumulative will not be permitted.

16 Are all witnesses who are to testify present?

17 MR. SMITH: Yes.

18 MS. COCHEU: All right. Would you --
19 Petitioner, would you tell us who the witnesses are
20 because I'm going to have everybody sworn in.

21 MR. SMITH: Yes. I will list all my
22 witnesses, but I actually think I'm only going to
23 call four depending on how it goes because I think
24 some would be cumulative.

25 Clovis Watson, Jr; Traci Cain; Joel DeCoursey;

1 time to testify comes.

2 We apparently have a place for you to make
3 yourself comfortable, as comfortable as possible.

4 The witnesses are cautioned not to discuss the
5 case either before or after testifying until
6 they're excused. Counsel for either party may
7 enter into discussions with their respective
8 witnesses.

9 Witnesses are to remain available after
10 testifying until the chair excuses them with the
11 consent of both parties.

12 Brandi, can you step these ladies and
13 gentlemen out?

14 COMMISSION CLERK TANTON: Sure.

15 MR. SMITH: If I might say for all of you, the
16 order I gave is the order I intend to call you if
17 that helps anybody.

18 MS. COCHEU: All right. It's time for
19 opening.

20 CHAIRPERSON MYERS: Mr. Smith, would you like
21 to give your opening statement?

22 MR. SMITH: Yes. Thank you to the Commission.
23 You obviously have a great deal of documents and
24 motions and information in front of you, but I want
25 to tell you very briefly the case that I'm going to

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1 present because this is a unique circumstance that
 2 probably could never be replicated, and finding out
 3 how we got here is an extraordinary journey.

4 The City of Alachua is a small town in North
 5 Florida that has now probably about 8,000 people.
 6 But probably had about 6,000 people in 2002, and in
 7 1983 was probably half of that.

8 The City of Alachua has a very limited staff,
 9 and we'll have somebody that will talk about the
 10 positions they had. They did not -- in certainly
 11 any of the time relevant here, didn't have a
 12 personnel or a human resources department. They
 13 had basically a set of departments which included
 14 the finance department which did everything from
 15 bill you for your water to send in salary, and some
 16 clerk at some point was assigned the job of sending
 17 in the monthly reports for retirement.

18 Clovis Watson was hired into the police
 19 Department in the City of Alachua in 1983 as a
 20 patrol officer. He was the first African-American
 21 to be hired in the police department. He was going
 22 to -- had a high school education at the time,
 23 going to college, and he continued to work in that
 24 department for the next 19 years.

25 In 1996, Clovis became a major, which in the

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1 Department that's the rank because the department
 2 has rankings, paramilitary rankings, but his job
 3 was actually Deputy Chief.

4 During all of this period of time he was in
 5 the high risk retirement plan, and for that there's
 6 really -- there's no consternation.

7 What occurs really in terms of understanding
 8 how we got where we are now happened in 2000. In
 9 2000, a relatively long-term city manager left the
 10 City of Alachua; and between 2000 and 2002 we
 11 managed to go through four city managers at about
 12 an every-six-month interval, in the course of which
 13 the City Commission became frustrated because at
 14 least in the case -- they'll testify, in the case
 15 of one city manager, by the time we got to know who
 16 he was, he'd already left.

17 And so they made a decision that they wanted
 18 to get somebody with some stability because we had
 19 lost city managers and the life spans had been
 20 about six months.

21 In 2002, the Department -- excuse me -- the
 22 Commission came to Clovis Watson. By then he had
 23 finished his bachelor's degree and was working on
 24 his master's degree. He had a law enforcement
 25 degree, and he was now getting his degree in

1 administration, and they said to Mr. Watson, "We
 2 would like you to come in and be the Interim City
 3 Manager."

4 Mr. Watson will testify that he went to see
 5 then the -- well, there was only one lawyer in town
 6 then. When he came to see me, basically the advice
 7 he got was, "Don't give up your day job for City
 8 Manager because the life span around here is not
 9 very long."

10 Mr. Watson will tell you that he required
 11 three things of the City, and you have it in your
 12 packet. In June of 2002 he entered into a contract
 13 as the Interim City Manager with the following
 14 stipulations: One, if for any reason you don't
 15 like the job I'm doing, you can fire me as City
 16 Manager, but you have to put me back as Deputy
 17 Chief because I'm not giving up 19 years as a
 18 police officer over three votes on a Commission
 19 that may change at any time.

20 Two: I stay in the high risk plan, and you
 21 agree that I stay in the high risk plan, and we
 22 will accommodate my job so that it meets the
 23 requirements of the high risk plan. You have the
 24 contract in front of you.

25 Well, at the time Mr. Watson took over as

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1 Interim City Manager in June -- actually I think
 2 the contract is approved by the City on June 26,
 3 2002. I think there was discussion for a couple
 4 weeks before that.

5 After two months, the City decided Mr. Watson
 6 was doing as well as anybody else had done. He'd
 7 survived almost a third of the normal life span for
 8 city managers, and so they decided to give him the
 9 position of permanent City Manager.

10 Again, Mr. Watson said, "Okay, I'll take the
 11 job, but here's the problem: I've got 19 years in
 12 Special Risk. I take care of my mother. I'm
 13 getting my master's degree. I'm working my way
 14 towards -- we'll get his educational
 15 accomplishments -- I want to retire under Special
 16 Risk."

17 The City said, "Fine."

18 Now, what happens in the interval sounds like
 19 a grand conspiracy, but it's really going to turn
 20 out to be very, very simple.

21 The City of Alachua in 2002 had a finance
 22 director, and that was the only person that dealt
 23 with payroll at all, and the only person that dealt
 24 with retirement was a clerk who was assigned to
 25 send in a monthly report.

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1 When Mr. Watson was transferred to the
 2 position of City Manager/Police Commissioner --
 3 which they give him that title because part of the
 4 deal with the City was, "Okay. I'll agree that I
 5 will keep my certification, and I will participate
 6 in investigations in the police department, and we
 7 will talk about -- and I will supervise the police
 8 department, in exchange for which you will allow me
 9 to continue in this. And if at any time you get
 10 rid of me, I go back and I'm reassigned to the
 11 police department because I'm not taking the job as
 12 City Manager without that stipulation. I've got
 13 plans of my own."

14 Everything goes fine. A city clerk files --
 15 continues to file what's called an HB filing. HB's
 16 the code for Special Risk. We'll have a witness
 17 who will say the record shows that nobody changed
 18 anything. They continued to turn him in, and when
 19 he became the permanent City Manager, they
 20 continued to file it as an HB, but what they did
 21 was they notified -- because he had been making
 22 about \$54,000. His salary went to \$80,000. The
 23 only thing changed was they showed a \$25,000 pay
 24 increase. No questions were asked.

25 Mr. Watson was never -- there won't be any

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1 school zone because the lady was late that's
 2 supposed to work there; so there was no question
 3 that Clovis was supervising somebody that was
 4 directly involved -- and he was intimately involved
 5 and even made decisions regarding recommendations
 6 as to who would be arrested, what crimes would be
 7 taken by the department, et cetera.

8 In 2003, Mr. Watson made the decision that the
 9 city employees of the City of Alachua had been
 10 removed from FRS, and they had gone into the --
 11 some of you remember this, the Florida League of
 12 Cities had a municipal plan, and they had sold the
 13 city employees on this in 1996.

14 In 2003, Mr. Watson, the City Manager, made
 15 the decision that they wanted to bring -- give the
 16 city employees -- and the City offered to pay and
 17 agreed to pay they would pay -- they would recover
 18 from League of Cities, pay any shortfall, and you
 19 can buy your way back into the FRS.

20 In 2004, Mr. Watson will tell you that Andy
 21 Snuggs from the DMS came down, made a presentation
 22 to the City of Alachua. Mr. Watson was hosting to
 23 the city employees to give them the plan, and at
 24 which time Mr. Watson talked about and openly said,
 25 "This is one of the reasons that I have remained in

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1 questions. Mr. Watson was never presented by the
 2 City, nor by any agency, any election that he chose
 3 to elect to remain within the provisions of any
 4 plan or not because it didn't occur to Mr. Watson.

5 In 2002, when he took the job, the other thing
 6 that happened is that the long-term City Clerk, as
 7 fate would have it, was out on Family Medical Leave
 8 for pregnancy. She took Family Medical Leave, so
 9 nobody checked with anybody regarding the records,
 10 but she will go back and show -- and you have his
 11 personnel file. But she will tell you, she's
 12 checked the records, nobody received anything.

13 The first time there was any communication
 14 after 2002 as to any change except for the
 15 substantial increase in his pay that went out was
 16 in -- and Mr. Watson the question never arises, he
 17 kept his certification every year, he kept his
 18 credits every year, and he kept the title as City
 19 Manager, Ex Officio Police Commissioner and stayed
 20 involved in the management of the department.

21 So that we don't think this is NYPD, I want to
 22 give everybody an understanding here. The size of
 23 the shifts in the Alachua Police Department is
 24 four. So the Chief writes tickets, the Chief --
 25 the Chief will testify that today he was at the

1 the high risk plan is because if you move to
 2 another job, you can stay in high risk."

3 As a matter of fact, there are documents that
 4 Ms. Cain will talk about in communications with
 5 Ms. Cain in which Mr. Watson set most of the
 6 paperwork up. He was always listed as the City
 7 Manager for the City of Alachua.

8 As a matter of fact, DMS came back in October
 9 and said, "By the way, you need to pass an
 10 ordinance now adopting what we've agreed to do."

11 An ordinance was passed and you have a copy of
 12 that ordinance attached, and that ordinance was
 13 passed and provided to them and Clovis signed it as
 14 City Manager, and the ordinance passed at the
 15 request of DMS. Nobody in 2004 raised any issue
 16 about this.

17 In 2007, the testimony will be that DMS -- in
 18 2007, that one individual in particular ran for
 19 City Commission unsuccessfully, and he sued the
 20 City enough times that he's built on to my house,
 21 and he's lost every time and continues to lose.

22 But among the other things he did was he filed
 23 a complaint with Ms. Morgan on June the 21st, and
 24 he filed a complaint with the Department saying
 25 that Mr. Watson was improperly claiming Special

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1 Risk pension benefits.

2 On June 28, the Mayor gets a letter, and it
3 says, "You're hereby notified that your City
4 Manager...and you're removed from the plan."

5 We filed, as you know, a timely appeal, and
6 all of that is in front of you and will be
7 discussed. There are really two things I wanted to
8 show here.

9 Number one, I want to show that he should have
10 been, would have been, could have been eligible to
11 stay in, and he will testify -- and the Mayor will
12 testify, everybody -- Mr. Watson would never have
13 entered into this position of City Manager had he
14 thought this jeopardized his Special Risk.

15 The City will tell you that they know they owe
16 a tremendous shortfall. The money has been offered
17 back to the City. The City has sent the money back
18 because they take the position he should have been
19 maintained.

20 You have cases, which we will discuss in our
21 closing. You have cases where the issue is also
22 fairness and equity: What did people know and
23 when?

24 It is plain that Mr. Watson -- and if you read
25 the contracts -- and you have them in front of you,

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1 and I invite you to read though -- you will see
2 that everything was structured to make sure that
3 Mr. Watson -- it was very clear -- that as Police
4 Commissioner, he was going to remain certified, he
5 was going to remain in the plan; and that he was
6 going to perform these special functions because of
7 that.

8 As a matter of fact, the testimony will be
9 that now the City has grown some and prospered
10 some, and they have two Assistant City Managers
11 assigned to different functions of the City, but
12 not to the police department because the Assistant
13 City Managers don't have any authority over the
14 police department. The police department answers
15 directly to Clovis Watson as they always have under
16 all of these agreements.

17 I want to tell everybody this case isn't
18 really about money. Mr. Watson gets his money.
19 This case is about time. He lost five years. It
20 doesn't matter -- Mr. Watson has now announced, and
21 the testimony will be he's leaving the City. He's
22 taking another position.

23 The question is he's lost five years, and
24 there's no way to make it up. And at no time
25 during that five years did Mr. Watson or any -- he

1 never made an election, no one ever gave him an
2 election. People plainly knew at some point in
3 time he was in that position, and if it was a small
4 city government that made a mistake in terms of how
5 they reported, there wasn't anybody to do the
6 reporting. I know the statute says the personnel
7 department. There wasn't one.

8 So that's really what we're going to be here
9 about. That's the case I'm going to present. I've
10 got Mr. Watson; Ms. Cain, she's the person who's
11 been involved in all the administrative. She's the
12 person who's done all the administrative work who
13 was off during that period of time. I got the
14 Chief of Police to talk about Mr. Watson's
15 involvement and the role of the police department;
16 and I have Bonnie Burgess, the Mayor, who was the
17 Mayor at that time. I have three commissioners
18 here, but the Mayor who is now the Mayor who was
19 the Mayor when Clovis was hired who will say -- and
20 we're not going to play the film -- that Clovis'
21 requirements were, "I won't take the job if it
22 costs me my retirement", and that's how we got
23 here.

24 We think that the statute and the rules could
25 be read to where it fits Mr. Watson; but beyond

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1 that, we think -- and we submit to you -- that
2 fairness and equity are that Mr. Watson ought to
3 get these five years. Nobody's trying to get
4 something that wasn't paid, wasn't earned. None of
5 that happened.

6 And finally, we think that it's critically
7 important to understand that Mr. Watson's problem
8 with retirement is one that's solely based on the
9 fact that because of the age and time matrix for
10 SMCS, his retirement's been delayed dramatically if
11 he does not prevail. It's certainly been delayed
12 by at least the five years that he retroactively
13 lost all the way back to -- ultimately they've gone
14 back and directed it to June of 2002.

15 Mr. Watson kept his certification up. The
16 question came up, the testimony will be, that
17 Mr. Watson -- and he was listed by the police
18 department as police officer because they were
19 sending it in for purposes of credits.

20 Mr. Watson will say that that was fine with
21 him because he kept his credits up. FDLE, when
22 they found out about this, they required him to go
23 into inactive status, but inactive status as a
24 certified police officer. Mr. Watson was never
25 separated from the police department. He was

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1 placed on separation. His separation was to
 2 clarify he can't hold two offices. We know that.
 3 That will be dual office holding. You can't be an
 4 active police officer and the city manager, but you
 5 can be the city manager and a certified police
 6 officer which was all that was trying to be
 7 accomplished in this.

8 We think that this case is one in which the
 9 facts are not going to be hotly disputed. I think
 10 most of facts are going to be pretty plain. I
 11 think the question now is that whether or not it is
 12 just a rule per se, as has been suggested, that a
 13 city manager is a compulsory position and,
 14 therefore, can never make an election.

15 Well, the answer is, we don't think that's
 16 true. A city manager is a compulsory position, but
 17 a member who is a Special Risk member still has
 18 rights under the statute. If that's the case, then
 19 we're going to present a case that will show he
 20 never had an election. Nobody -- the City didn't
 21 give him an election, the Department didn't give
 22 him an election, no one ever asked the question.
 23 Mr. Watson acted all times in good faith, and
 24 that's the issue that will be in front of this
 25 Commission. Thank you.

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1 MS. STEVENS: Thank you, Commissioners. As
 2 you heard, the Petitioner was a police officer with
 3 the Alachua Police Department from 1983 to 2002.
 4 In 2002, he was appointed as the City Manager
 5 for the City of Alachua. The issue here today is
 6 whether the Petitioner is actually entitled to
 7 Special Risk Retirement while he was employed as
 8 the City Manager.

9 Now, despite what the Petitioner would like
 10 you to believe, this case isn't decided on things
 11 like, The City would really like him to have
 12 Special Risk Retirement, or, We just don't think
 13 that it's fair, or, Clovis Watson is a nice guy,
 14 or, He's done good things for the City.

15 That doesn't matter. What matters here are
 16 two statutes: The Special Risk statute and the
 17 Senior Management Service Class statute.

18 First we'll take a look at the Special Risk
 19 statute because that's where he's trying to get
 20 into. It's 121.0515, and you've been provided
 21 copies of those.

22 This provides the criteria for Special Risk
 23 Class membership. Subsection (2)(a) specifically
 24 deals with law enforcement officers. The first
 25 criteria listed is that you have to be employed as

1 a law enforcement officer. Clovis Watson is not
 2 employed as a law enforcement officer. He is
 3 employed as a city manager. It doesn't matter.
 4 You can be certified all day long, but if you're
 5 not employed as a law enforcement officer, it
 6 doesn't matter.

7 You can be the direct supervisor -- and I'm
 8 certainly not stipulating that he is -- but you can
 9 be the direct supervisor of first-line Special Risk
 10 members, and it doesn't matter because you're not a
 11 law enforcement officer.

12 Under the Special Risk statute he doesn't fit.
 13 Certification doesn't matter. Duties don't matter
 14 because he's not employed as a law enforcement
 15 officer.

16 So where does he go? Take a look at the
 17 Senior Management Service Class statute. It
 18 specifically says, "That except as provided in
 19 Subparagraph (2) below --" which I'll talk about
 20 "-- City Managers are Compulsory Senior Management
 21 Service Class members. That's where he goes.

22 Well, it does say, "except as provided in
 23 Subparagraph (2)."

24 So what does that say? Instead of
 25 participating in Senior Management Service Class,

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1 he can withdraw from FRS altogether.
 2 The Special Risk Class was already established
 3 when the statute came about, and for city managers
 4 that is not an option. They can be in Senior
 5 Management Service Class or they can opt out of
 6 FRS.

7 The Petitioner is a city manager. He belongs
 8 in the Senior Management Service Class.

9 Now, you've heard Mr. Smith talk about this
 10 election. This election is found in the Senior
 11 Management Service Class statute. However, if you
 12 look at the statute -- it's found in Subsection (6)
 13 -- this election is reserved for individuals
 14 eligible for the Senior Management Optional Annuity
 15 Program, because Subsection (6) creates or
 16 establishes this program, which is also called
 17 SMOAP. I'll refer to it as SMOAP. If you're not
 18 eligible for SMOAP, you don't even go to Subsection
 19 (6). It's not even an option for you.

20 Only state employees are eligible for SMOAP.
 21 How do we know this? When you look at the statute,
 22 you look at (a), (b), (c), you go down, each
 23 particular subsection talks about a different
 24 category of positions.
 25 City managers and other local compulsory

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1 agency employees are found under Subsection (1)(b).
 2 At the end of each subsection, like I said, if you
 3 look at the end, it will say in the other
 4 subsections -- not dealing with local agency
 5 employees, it says they can also go -- or they can
 6 also be a member of SMOAP. It does not say that in
 7 Subsection (b) which deals with local agency
 8 employers. It says that they can withdraw from
 9 FRS. You don't go to Subsection (6), and if you
 10 don't go to Subsection (6), you certainly don't go
 11 to Subsection (6)(c)(3). It's not an option.

12 However, let's entertain the idea that it may
 13 be an option. The statute says that the election
 14 has to be filed -- it shall be filed -- which is
 15 mandatory -- must be filed within 90 days of the
 16 appointment to a Senior Management Service Class
 17 position. The Petitioner has admitted the failing
 18 to file an election in Answer Number 1 to the
 19 interrogatories which have been filed with you.

20 The Division didn't even know of his
 21 appointment to the Senior Management Service Class
 22 until years after he was appointed. Certainly not
 23 within the 90 days.

24 And he says, "Well, no one ever told me about
 25 the election. It's not fair."

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1 Special Risk as City Manager because as the
 2 testimony of Joyce Morgan will say, he would be the
 3 absolute first city manager or county manager
 4 that's in Special Risk. He would be the only one.
 5 He would be setting a new precedence for all city
 6 managers who have ever been in Special Risk to
 7 remain in the Special Risk Class because there's
 8 not one, there never has been, and there isn't
 9 currently any city manager or county manager that
 10 has remained in the Special Risk Class.

11 We've looked at the Special Risk statute. He
 12 doesn't fit. He's not employed as a law
 13 enforcement officer. Certification or not. It's
 14 where your employed.

15 I'm a lawyer, and I could go be a janitor. It
 16 doesn't make me a lawyer. It's clear where it
 17 belongs. The City doesn't decide where he belongs.
 18 Mr. Watson doesn't decide where he belongs. The
 19 legislature decides where he belongs, and the
 20 legislature has said that city managers are
 21 Compulsory Senior Management Service Class members,
 22 and we request that you uphold the Division's
 23 decision to deny his membership in the Special Risk
 24 Class for this period of time.

25 CHAIRPERSON MYERS: Thank you. Do you want to

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1 Well, number one, you're not entitled, but
 2 even if you were entitled, how in the world would
 3 we tell you about it because he had been reported
 4 by the City as a law enforcement officer since
 5 1983. There was never any change.

6 They were sending in their reports that said
 7 all of the individuals in the city that were in
 8 FRS -- have their names, have their codes -- he was
 9 reported under the law enforcement officer code
 10 since 1983.

11 Why would we question that? Why would we send
 12 him a notice when he didn't even tell us he was
 13 switching his position?

14 And, also, he says it was so important to
 15 me -- and you'll see in the affidavits that were
 16 filed -- that he says, you know, that he went to
 17 the Chief of police at the time to make sure he was
 18 being reported the right way.

19 Well, he never came to the Division. It's so
 20 important to him that he stay in the Special Risk
 21 Class, yet he never came to the Division and asked
 22 us. He just took the position assuming.

23 And the courts have said the cities are not
 24 agents of the Division. We didn't tell him, and we
 25 would certainly never tell him he's entitled to

1 call a witness?

2 MR. SMITH: Yes. We'd request a five-minute
 3 break.

4 (Whereupon, a recess was taken from 2:46 to
 5 2:52 p.m.)

6 CHAIRPERSON MYERS: Mr. Smith, are you ready
 7 for your first witness?

8 MR. SMITH: I call my first witness. Clovis
 9 Watson.

10 CHAIRPERSON MYERS: Mr. Watson's going to be
 11 your first witness. He's been previously sworn.

12 * * * * *

13 Whereupon,

14 CLOVIS WATSON, JR.

15 was called as a witness, having been first duly sworn to
 16 speak the truth, the whole truth and nothing but the
 17 truth, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SMITH:

20 Q. State your full name, sir.

21 A. Clovis Watson, Jr.

22 Q. And where do you reside?

23 A. 16591 Northwest 129th Terrace, Alachua,
 24 Florida.

25 Q. How long have you lived in Alachua, Florida?

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1 A. All my life.
 2 Q. And how many years would that be?
 3 A. 50 plus -- 51 -- I'm not 51 yet. I'll be 51
 4 this year.
 5 Q. And what is your employment?
 6 A. City Manager, City of Alachua.
 7 Q. When were you first employed with the City of
 8 Alachua?
 9 A. 1983.
 10 Q. Tell this Commission what position that you
 11 were hired into at the City of Alachua.
 12 A. Patrolman.
 13 Q. And at the time in 1983 when you were hired
 14 into the Alachua Police Department, how many officers
 15 did the City have?
 16 A. I think we had about between 9 and 11, I
 17 believe, if that.
 18 Q. And --
 19 A. Something like that.
 20 Q. And if I could go back --
 21 A. If I remember correctly.
 22 Q. -- at the time, how many African-Americans did
 23 you have in the City of Alachua Police Department?
 24 MS. STEVENS: Relevance? I don't know how him
 25 being an African-American has anything to do with

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1 sergeant, how long did you stay in that position?
 2 A. Until 1996.
 3 Q. And in 1996 how has your employment changed?
 4 A. I was promoted to the position of Deputy Chief
 5 of Police.
 6 Q. Did that have a rank?
 7 A. Major.
 8 Q. And without going in all of the structure of
 9 the police department, at the time you became the Deputy
 10 Chief in 1996, approximately what was the size of the
 11 Department.
 12 A. Approximately maybe 15, 16, something like
 13 that.
 14 Q. That included you and the Chief?
 15 A. That's correct, if my memory serves me
 16 correctly.
 17 Q. And what were the duties that you had as the
 18 Deputy Chief?
 19 A. I supervised the day-to-day operations
 20 certainly under the directions of the Chief. I was also
 21 the PIO, public information for the City. I wrote all
 22 the press releases. I was over grants and contracts, as
 23 well as school resources, community policing, a great
 24 deal of day-to-day functions.
 25 Q. Between 1983 -- at the time you were hired in

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1 being City Manager or Special Risk Retirement.
 2 MR. SMITH: Actually, if you'll allow me, I
 3 will show that he was hired because there was a
 4 racial incident, and that was a primary concern why
 5 they were hiring him.
 6 MS. STEVENS: I just don't know why 19 years
 7 later would have anything to do with --
 8 MR. SMITH: Well, he's been African-American
 9 all his life.
 10 MS. STEVENS: Really? That's amazing. I
 11 think Joyce has, too.
 12 CHAIRPERSON MYERS: Actually, I don't think
 13 there's a relevance in it. I mean, in this day and
 14 age, why then -- and you have proven that you can
 15 do your job and have done very well. I mean, you
 16 certainly have a high recommendation all through
 17 your career which we have all recognized.
 18 THE WITNESS: Yes, ma'am.
 19 BY MR. SMITH:
 20 Q. And how long did you reign the position of
 21 patrolman?
 22 A. Until 1994.
 23 Q. And what happened in 1994?
 24 A. I was promoted to the position of sergeant.
 25 Q. And when you were promoted to the position of

1 1983, what was your education?
 2 A. When I was hired in '83, I only had my high
 3 school.
 4 MS. STEVENS: I'm sorry, Commissioners. I'm
 5 going to have to object to this, too. I just don't
 6 understand what his education has anything to do
 7 with his retirement benefits.
 8 MR. SMITH: Seems to me we normally give
 9 background on witnesses so you understand --
 10 CHAIRPERSON MYERS: We give a little
 11 background so we know. We don't go --
 12 MR. SMITH: I won't spend a great deal of time
 13 on it.
 14 BY MR. SMITH:
 15 Q. I think it's important because by 1996 when
 16 you became the Deputy Chief, how had your education
 17 changed?
 18 A. Completed an associate's degree in criminal
 19 justice technology.
 20 Q. And were you pursuing any others?
 21 A. I was pursuing my bachelor's.
 22 Q. After 1996 -- before I leave that, in the City
 23 of Alachua Police department, did the Deputy Chief as
 24 well as the Chief actively involve themselves in the
 25 enforcement of the laws, pursuit and apprehension of

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1 violators?

2 A. We did everything, and it is the same way for
 3 most small municipalities. The entire department sort
 4 of operates where everyone puts their hand in the jar,
 5 if you will, to help out with the operations of the
 6 Department. You do traffic, you do investigations, you
 7 do -- if someone is not available, a traffic light goes
 8 out, you go out and do it. You don't have the luxury of
 9 some of the larger municipalities where you can sit in
 10 the office and someone else does it.

11 Q. In 2002 did your position change in the City
 12 of Alachua?

13 A. Yes.

14 Q. Tell the Commission how that came about.

15 A. Well, the City had gone through approximately
 16 four or five city managers in a very short period of
 17 time. I was the Deputy Chief. I attended a great deal
 18 of the Commission meetings.

19 Then we had the last one they fired, and I was
 20 actually attending that particular meeting, and I was
 21 there as the police official, and the Commission --
 22 after they fired this final city manager, they stated
 23 they wanted to pick someone within the City of Alachua
 24 to sit in in the interim until a permanent city manager
 25 was found, and I was the one they picked, and certainly

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1 I was honored and blessed with the opportunity, but
 2 certainly I had some concerns.

3 Q. What were the concerns that you had about
 4 becoming the Interim City Manager?

5 A. Well, one, you know, it was -- city managers
 6 were going through like a conveyor belt.

7 Number 2, my -- as I stated and as you alluded
 8 to -- my high risk retirement, where I spent the better
 9 part of 19 years with the police Department.

10 Q. And did you -- as a result of that, did you
 11 require a written contract with the City?

12 A. Yes, I did.

13 Q. I'm not going to go through and reidentify
 14 things that are already in this record, but you first
 15 had a contract as the Interim Chief?

16 A. Yes. Interim City Manager.

17 Q. Excuse me. Interim City Manager.

18 A. Yes.

19 Q. And without going in all the details, were you
 20 then -- if they decided not to retain you as City
 21 Manager, what would happen?

22 A. Well, I asked for a provision to allow me to
 23 go back to the police department in the same or similar
 24 role if it did not work out as the City Manager, and
 25 that was -- and the Commission agreed to put that in the

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1 contract because the City was going through a very, very
 2 difficult time.

3 Q. In August of -- this was in June of 2002 --

4 A. That was June 5, 2002.

5 Q. In August of 2002, did you again change your
 6 status with the City?

7 A. At that time they liked what was happening.

8 They liked the energy and some of the initiatives I was
 9 putting forth in the community as Interim, and they
 10 offered the position to me permanently, and certainly I
 11 accepted with those stipulations in the contract.

12 Q. And again I have presented, I think, a series
 13 of contacts that go from August all the way to date.

14 But in those contracts, have you retained the original
 15 right to return to the police department at any time?

16 A. To this very day.

17 Q. And moreover in the contracts, was it provided
 18 that there was to be a title of City Manager/Ex Officio
 19 Police Commissioner?

20 A. That's correct.

21 Q. Tell the Commission why the City added the ex
 22 officio title of police commissioner to your position.

23 A. Well, one they wanted me to -- as I wanted to
 24 and they agreed -- to keep my high-risk status.

25 Number 2, because I had been with the City of

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1 Alachua for so very long, you establish a rapport with
 2 the community where everyone looks to you. They wanted
 3 me to work closely with the police department because of
 4 so many of the issues. I knew the families, I knew the
 5 areas -- in particular -- the concerns, the drug areas,
 6 and they wanted me to play a role in looking at video,
 7 different things of that nature -- too much to get into
 8 at this particular time; and I did that in assisting the
 9 police department as well as having my high-risk status.

10 Q. Were you required to remain as -- to keep that
 11 police commissioner title -- to remain certified with
 12 the State of Florida so if, in fact, you were removed
 13 you were eligible to go back immediately to your sworn
 14 position?

15 A. That was their requirement of me. My
 16 requirement of them was to allow the things that I
 17 stated. Their requirement of me was to have my
 18 certificate active so if they do send me back -- or I
 19 elect to go back -- then I was certified so that I could
 20 work with the police department.

21 Q. And between 2002 to date, have you kept your
 22 certification with the State of Florida FDLE as a law
 23 enforcement officer?

24 A. Yes, I have.

25 Q. And that was a requirement of your position?

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1 A. That's correct.

2 Q. Okay. Now, in 2004 -- late 2003, early 2004,
3 did you, as City Manager, make any decisions regarding
4 the status of some of the city employees related to the
5 state retirement system?

6 A. Yes. And I really need to explain that, if I
7 may. When I was -- I had been working for the City for
8 quite some time, so I was grandfathered in with state
9 retirement.

10 And in 1996, I believe, one of the former city
11 managers elected to go to Florida League of Cities.
12 Well, I can tell you from being a long-time employee and
13 knowing all of the employees, they were not happy with
14 that. They didn't think it was a good system, even if
15 the manager did, and the finance director at the time
16 thought it was.

17 So when I was blessed with this opportunity to
18 be the City Manager, one of the first things we looked
19 at is to evaluate getting back, even though it didn't
20 happen until '04, but one of the first things I advised
21 my staff to do was evaluate getting back into the
22 Florida Retirement System.

23 And let me be clear: It was not self-serving
24 because I was grandfathered in. I was already getting
25 state retirement, but they weren't. Half of our

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1 employees were, half were not, and I wanted all of us to
2 be on one plan because I do think the Florida State
3 Retirement is the best system in the State of Florida.

4 Q. Did you assign that job, if you will, of
5 getting them back into the system to any of your
6 subordinates?

7 A. I assigned it to Traci Cain.

8 Q. Okay. Now, before I leave this, in 2002,
9 first when you were named the interim manager and then
10 named the permanent manager, did you have a personnel or
11 human resource department in the City?

12 A. Not at the time. I worked as the manager to
13 bring some serious structure to the City, and we have
14 grown immensely under my directive the last few years.

15 Q. But in 2002, was there a personnel department?

16 A. No.

17 Q. A human resources department?

18 A. No.

19 Q. In 2002, did you know how the City reported
20 you to the Department of -- to the Division of
21 Retirement?

22 A. I didn't know how, but I advised the Chief at
23 the time and made sure he continued to report me high
24 risk -- well, he was at the meeting when the Commission
25 stated it, and so he continued to report me as I was

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1 being reported because after they approved it -- and I
2 sincerely did not know there was something else to do,
3 and if I had, I would have, but I sincerely didn't know.

4 Q. Did anybody ever from the City or from any
5 agency of the state provide you any papers by which you
6 were to make an election or a selection of which system
7 you were to be in?

8 A. No, I don't think they knew.

9 Q. Now, in 2004, pursuant to this idea that you
10 had to move the employees after 1996 back into state
11 retirement, did you have anybody from the Division of
12 Retirement come down and meet with the employees of the
13 City?

14 A. Yes. It was a lady in -- I cannot think of
15 her name. The guy -- I cannot think of his name. Right
16 now, if you say it, I might recall.

17 Q. Do you recall meeting with Andy Snuggs?

18 A. Mr. Snuggs and another lady with him came and
19 did a presentation for all of my employees.

20 And one thing I will add being sworn as city
21 manager, I wanted the officers to be clear that it's a
22 good opportunity, and I stated in this meeting with
23 Mr. Snuggs that it afforded me the opportunity to get
24 into an administrative role and maintain my high risk
25 retirement. This was discussed in this open meeting and

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1 there may be minutes to it if the state took any, and
2 that was me making the officers comfortable that if you
3 go up the ranks, you still would have that opportunity.

4 Q. And outside of that meeting, did you talk with
5 Mr. Snuggs about the role you were playing in the police
6 department?

7 A. We talked on the side, but I don't remember
8 everything we said, but we had conversations about
9 Alachua and me leading the community now and certainly
10 me being a former cop certainly, but nothing officially
11 to him, just --

12 Q. Was anything raised in conversation or
13 otherwise when you said that you had remained in the
14 Special Risk pension -- the high risk pension, I'm
15 sorry -- I think is what you called it?

16 A. No. I think the officers asked a couple
17 questions, and I really can't recall what they were, but
18 that was something I shared with them because I wanted
19 my staff to buy into it because when you make a change,
20 you really want to explain it to your staff, and I just
21 truly thought that this was much better than the
22 retirement system the previous manager had elected to
23 take.

24 Q. And I'll get into this later with Ms. Cain for
25 the most part, but during this period of time in

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1 exchange of documents, was the City eventually required
 2 to pass an ordinance adopting a plan that would transfer
 3 the employees into the state retirement system?

4 A. Yes. It's part of the process.

5 Q. You have that document -- that ordinance is
 6 already in the record. And at that time, you signed it
 7 as the City Manager?

8 A. That's correct.

9 Q. When was the first time you ever learned there
 10 was any issue regarding your retirement status?

11 A. I think the same day, and I don't know whether
 12 it was -- which came first. I was -- excuse me.

13 Q. Do you remember being informed of a letter
 14 that Mayor Coerper had received?

15 A. (Witness nods head affirmatively.)

16 Q. Do you remember that?

17 A. Give me a second.

18 Q. Yeah. Take a break?

19 A. Yes, I was with my mother.

20 Q. I want to ask you very quick -- back up just
 21 because you mentioned this, who was there?

22 A. Give me a second. Hold on.

23 MR. SMITH: Could we have a break for a
 24 second?

25 (Whereupon, a brief recess was had and Mr.

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1 Watson left the room.)

2 BY MR. SMITH:

3 Q. Mr. Watson, before I go back to the last
 4 question, I want to back up just a moment and ask you
 5 this, you mentioned your mother -- and I know that's a
 6 difficult situation, but was there a specific reason at
 7 the time that you took the position that you informed
 8 the City of why it was important for you to have early
 9 retirement?

10 A. Yes. I have a disabled mother that I take
 11 care of, and that was the time frame that I planned to
 12 do that. But certainly I'm looking at other
 13 opportunities, but certainly '08 is -- really I planned
 14 to retire in November of '08, and this came up; so that
 15 certainly changed things quite a bit, so I apologize for
 16 getting a little emotional when I talk about my mother
 17 because she's a little -- not in good shape.

18 Q. I think my question to you was when was the
 19 first time you actually remember there being any issue
 20 raised --

21 A. It was on TV-20, and I was there with her, and
 22 that's when she got worried because she thought no one
 23 would be there, but certainly my sister's stepping in.
 24 It was -- I think I got the letter the same day it was
 25 on TV-20 if I'm not mistaken from the Tallahassee area.

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1 Q. Prior to that date, had you had anyone ever
 2 ask you any questions from any Division regarding -- or
 3 any Department regarding your status in the retirement
 4 system?

5 A. No. That was the first time I knew of it.

6 Q. Now, there's in this -- I think it has already
 7 been filed in some documents from a Mr. Grapski?

8 A. Yes.

9 Q. I'm not going to spend a lot of time on this,
 10 but Mr. Grapski was the party and his attorney was Mr.
 11 Little. Mr. Grapski and Mr. Little were the ones that
 12 made the original --

13 MS. STEVENS: Relevancy?

14 MR. SMITH: I think it's extremely relevant to
 15 talk about the nature of -- how this allegation
 16 came about, and the fact that nobody ever asked.
 17 There was an immediate response of pulling him out
 18 of the system, never given a hearing before he was
 19 pulled out of the system on the basis of
 20 allegations by somebody who was a disgruntled
 21 officer seeker who had --

22 MS. STEVENS: I'm sorry. I don't understand
 23 why that needs to be on the record. The individual
 24 we got our information from was a follow-up call
 25 from the Governor's office asking us to investigate

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1 Mr. Watson's situation. I don't know why that's
 2 relevant.

3 MR. SMITH: That's interesting, because if
 4 they were supposed to investigate, I don't remember
 5 that investigation taking place. All I remember is
 6 eight days later they got a notice he'd been
 7 removed retroactive to 2002. That's some
 8 investigation.

9 MS. STEVENS: The investigation is to look at
 10 a provision and say, He's a City Manager. The
 11 statute says, City Managers go here, and he goes
 12 here. That's it.

13 COMMISSIONER SEAY: Madame Chairman, I would
 14 wonder why this occurred at this point.

15 CHAIRPERSON MYERS: Why, yes.

16 COMMISSIONER SEAY: Why would it have not
 17 happened before that? I think that's relevant.

18 MS. STEVENS: That was the time we received
 19 notice. Who we received the notice from, I don't
 20 know why that would be relevant.

21 COMMISSIONER SEAY: Seems unusual --

22 MS. STEVENS: So if Mr. Watson was arrested:
 23 and the charges were later thrown out, I don't know
 24 why that would be relevant. It's not even relevant
 25 to the record.

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1 MR. SMITH: You just put it in. You just put
 2 that in the record. You must have thought it was
 3 pretty relevant?

4 MS. STEVENS: No.

5 CHAIRPERSON MYERS: I think we're going to
 6 have to go ahead with it.

7 BY MR. SMITH:

8 Q. Who was Mr. Grapski?

9 A. He was someone who has continued to disagree
 10 with the direction of the City of Alachua and sued us on
 11 -- I don't know -- too many times to count. It's cost
 12 the City over a million dollars.

13 Q. And prior to your receiving that letter, after
 14 Mr. Grapski made these complaints and lawyers made these
 15 complaints, have you ever had any question or inquiry
 16 made of you regarding what you were doing at the City or
 17 why you were in the retirement?

18 A. No.

19 Q. Now, at the time you received that initial
 20 letter you were notified that you had been removed --
 21 the City -- excuse me -- the City received notice that
 22 you had been removed from the retirement?

23 A. It was -- I think Commissioner -- Coerper was
 24 the Mayor at the time, and he informed me, but I really
 25 can't tell you whether it was television or the letter,

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1 but I think they came the same day, if I'm not mistaken,
 2 but real close. My first was the television.

3 Q. And at that time, was it your decision to
 4 contest your being removed -- or frankly the City's
 5 decision to contest your being removed?

6 A. Both, absolutely.

7 Q. Again, from 2002 -- from 2004 particularly
 8 until 2007, no one had ever raised this issue with you
 9 or the City to your knowledge?

10 A. Never until Mr. Grapski and Mr. Little.

11 Q. And in the letter of June 28, I believe it is,
 12 2007, it states that you'd been reassigned to the Senior
 13 Management Services Class. Did you ever -- were you
 14 ever offered an election at that time to remain in the
 15 Special Risk Class?

16 A. No.

17 Q. I want to talk to you about your role with the
 18 Alachua Police Department while you have been the
 19 permanent city manager.

20 A. Yes.

21 Q. Explain -- does the City now have assistant
 22 city managers?

23 A. Yes.

24 Q. And how many?

25 A. I hired two.

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1 Q. And the assistant city managers, are they
 2 assigned to respective departments within the government
 3 of the City?

4 A. Yes, I have assisting and operating public
 5 works, recreation, and so many other things. Utilities,
 6 but not the police department.

7 Q. And the police department chief answers to
 8 whom?

9 A. To me.

10 Q. And does the Chief, to your knowledge,
 11 actively involve himself in the day-to-day arrests,
 12 pursuit, and apprehension of violators of the law?

13 A. Absolutely. It's not an option.

14 Q. And still does?

15 A. Absolutely.

16 Q. Have you, in fact -- no, before I leave that.
 17 Did you at some point in 2007 find that FDLE had you in
 18 active status?

19 A. Yes.

20 Q. Was that changed?

21 A. Retro to the time that we're asking, retro to
 22 my retirement.

23 Q. When that occurred up until that time, had you
 24 had any question -- did you know how you were being
 25 regarded as active or inactive with FDLE?

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1 A. I did not know at that time there was
 2 something I needed to do, but they informed me and I did
 3 it.

4 Q. And did you remain certified after that?

5 A. Yes.

6 Q. In an inactive status?

7 A. That's correct.

8 Q. But your certification is still required
 9 pursuant to your contract?

10 A. It's still active -- it's inactive status, but
 11 I still have any certification.

12 Q. Mr. Watson, at any time between 2002, June of
 13 2002 when you became Interim City Manager and to date
 14 but certainly until June of 2007 almost five years to
 15 the day later when you were removed, had you known there
 16 was -- had you known that you were not going to be
 17 allowed to remain in high risk, tell this Commission
 18 what you would have done.

19 A. I would have immediately gone back to the
 20 police department, which -- no doubt. The Commission
 21 knew that. That's on the record at public meetings.

22 And everything was done in a public commission
 23 meeting. Nothing was done in an office. It was all
 24 done with the public there to make comments and
 25 statements about all of these actions that we made.

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1 Q. Mr. Watson, going back to 2002 when you became
 2 the City Manager --
 3 A. Yes.
 4 Q. -- there was a Traci Cain that was working for
 5 the City?
 6 A. That's correct.
 7 Q. What immediately happened at the time you took
 8 over?
 9 A. She took the Family Leave -- Family Medical
 10 Leave Act. She was having a baby and had some
 11 difficulties so she was gone for a while.
 12 Q. Was there a finance director?
 13 A. They left, too.
 14 Q. When the finance director left, were you aware
 15 of how you were actually being reported to retirement?
 16 A. I assume that I was being reported as high
 17 risk, and let me be clear --
 18 Q. I want to make sure this Commission
 19 understands, was that something you showed paperwork to
 20 show how you were being reported?
 21 A. Well, I never dealt with it, no. I never
 22 dealt with it, but a lot of the people left when I first
 23 became City Manager because the City was really in a
 24 chaotic state.
 25 Q. Mr. Watson, have you announced your plans with

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1 Q. And at any time had you been asked by anyone
 2 from the Department or otherwise to provide -- were you
 3 asked to provide any documentation prior to you being
 4 removed?
 5 A. No.
 6 Q. Were you asked regarding what you were doing,
 7 the job you were doing, or any of the contracts placed
 8 in evidence here? Had any of that been presented to the
 9 Department by the City to the Division -- excuse me --
 10 prior to your having notice that you had been removed
 11 retroactive to 2002?
 12 A. Not until the letter and the news media --
 13 TV-20 -- I think that people who complained went to the
 14 media, if I'm not mistaken.
 15 Q. Just one second, please.
 16 Mr. Watson, I just want to go back just to get
 17 this on the record for certainly later, you've mentioned
 18 that Mr. Grapski was involved in several cases involving
 19 the City of Alachua all of which I think you said cost
 20 close to a million dollars in fees and costs to the
 21 City?
 22 A. Probably a bit more than a million with staff
 23 and everything. I mean --
 24 Q. And to date, has Mr. Grapski won anything?
 25 MS. STEVENS: I would object again. I'd just

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1 the City?
 2 A. Yes. I had talked with the Commission back in
 3 '07 before this came about that I was going to be
 4 retiring in November of '08, but certainly I just
 5 couldn't leave the way things are now, because under
 6 Senior Management, I think I would have to be 62, which
 7 I would lose five percent a year until -- which is 12
 8 years, so I just couldn't; but because of a number of
 9 circumstances, I am retiring even if I lose.
 10 Q. Have you already announced your retirement
 11 date to the City?
 12 A. Yes.
 13 Q. When is that?
 14 A. November of next year.
 15 Q. 2010?
 16 A. That's correct.
 17 Q. Since Traci Cain returned to the City after
 18 her medical leave, has she been the person in the City
 19 most responsible for the operation of human resources
 20 and personnel?
 21 A. I created a Human Resources Department, and
 22 she's been running that department.
 23 Q. As part of her --
 24 A. Duties? Human Resource Director. Then I
 25 promoted her to Assistant City Manager.

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1 like to have a continuing objection to relevance
 2 regarding anything about Mr. Grapski.
 3 BY MR. SMITH:
 4 Q. Your answer was?
 5 A. He hasn't won any of the lawsuits, but it has
 6 cost us a great deal of money having to defend them.
 7 Q. And at the time that Mr. Grapski made his
 8 complaint with the Division and upon which they acted,
 9 to your knowledge, had Mr. Grapski been subject to one
 10 or more criminal charges against him?
 11 A. Several, and he also injured a female officer,
 12 and he's done a lot of stuff.
 13 MR. SMITH: I have nothing further.
 14 CROSS-EXAMINATION
 15 BY MS. STEVENS:
 16 Q. Just a couple questions for you, Mr. Watson.
 17 Thank you. Your first contract didn't include the terms
 18 "ex officio," did it?
 19 A. I don't think it did the first time. I think
 20 it just stated keep my certificate active, something.
 21 Q. And that wasn't actually added into your
 22 contract until June 2007; isn't that correct?
 23 A. I think the attorneys brought it for
 24 clarification of what it meant, yes, ma'am.
 25 Q. And you were initially listed as the City

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1 Manager slash Police Commissioner in your initial
2 contract?

3 A. That's correct.

4 Q. And at that time, the City still reported you
5 to FDLE as a full-time law enforcement officer; isn't
6 that correct?

7 A. I don't know whether it was law enforcement
8 officer or high risk, but whatever the process was, I
9 was -- I can't tell you how they did it because I didn't
10 see the paperwork, but I knew they kept me in that
11 high-risk category, and however they needed to do that
12 to do it they did it.

13 Q. But you're not aware of how you were being
14 reported to FDLE at the time?

15 A. Are you talking about --

16 Q. How you were -- I'm sorry. Maybe I wasn't
17 clear. The City was -- is it correct that the City kept
18 reporting you to FDLE as a full-time law enforcement
19 officer after your appointment to City Manager?

20 A. That's correct.

21 Q. And isn't it correct that the city reported
22 you to FDLE as a full-time law enforcement officer until
23 2007?

24 A. That's correct.

25 Q. Isn't it true that you made arrests while you

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1 were City Manager?

2 A. That is correct.

3 Q. And isn't it true that in 2007 you received a
4 letter from FDLE that stated that at that time it was
5 the opinion of FDLE prior to filing an affidavit of
6 separation that you were in violation of the
7 dual-office-holding provision of the Florida
8 Constitution?

9 A. That's correct.

10 Q. And in that letter they also said they were
11 separating you as a full-time law enforcement officer?

12 A. That's correct, and I did the paperwork for
13 it, and they did it retro from the time I was Interim
14 Manager.

15 Q. And didn't they also ask you to cease any of
16 the duties involved with being a law enforcement
17 officer?

18 A. That's correct, and I did.

19 Q. That's good. Is your certification currently
20 in the special status?

21 A. Inactive, yes.

22 Q. And were you notified that you could only
23 associate with a law enforcement agency for the
24 mandatory retraining purposes?

25 A. Well, in '07? You mean in 2007?

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1 Q. Yes.

2 A. Yes.

3 Q. 2007. Yes.

4 A. But as a sworn officer, now -- to clarify
5 that, if I may -- you can do anything. You can have a
6 number of people who work with the agency who are not
7 sworn. Our dispatchers are not sworn; so when I have
8 assisted the police department, I did not do it as a
9 sworn officer, I did it as City Manager supervising the
10 Chief and supervising the department. As I alluded to
11 earlier, when you are in a city for so many years and
12 know everyone, you're just needed.

13 Q. Sure.

14 A. So it's something the Commission wanted and
15 needed me to do, and actually the department needed me
16 to do it for us to be successful during those times.

17 Q. Now, in your original contract it said that
18 you were going to continue participating in criminal
19 investigations; is that correct?

20 A. That's correct, and I have.

21 Q. Do you still do that?

22 A. Absolutely, to this day. Just not long ago
23 they called me to look at a video because I probably
24 would have been the only one who would have known who it
25 could have been; so I do participate, but not as a sworn

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1 officer. Just as an employee for the City who assists
2 because I supervise that agency, and certainly I want to
3 make sure we're successful in the handling of our
4 citizens and our criminal investigations.

5 Q. Isn't it true the City filed the Affidavit of
6 Separation with FDLE in 2007?

7 A. That's correct.

8 Q. And it separated you from your full-time law
9 enforcement officer position?

10 A. It separated me from active to inactive status
11 with my certification, yes, ma'am.

12 Q. And that Affidavit of Separation was
13 retroactive to June 5, 2005?

14 A. That's correct. 2002.

15 Q. I'm sorry. I misstated. 2002. That's
16 correct.

17 Now, you now maintain that your Police
18 Commissioner title was ex officio; is that correct?

19 A. That's correct.

20 Q. And this title simply emphasizes your
21 continued eligibility to reinstatement to the Alachua
22 Police Department; is that correct?

23 A. For the reasons I indicated earlier, that, as
24 well as being involved and things of that nature, but
25 it's ex officio. That's what it's determined to be, and

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1 we did that to make sure we were clarifying so it would
 2 not appear there was dual office holding because we
 3 wanted to make sure we did not have that perception
 4 there because that was not the intent.

5 Q. So you now admit you were not a sworn officer
 6 after taking the position as a City Manager?

7 A. Yes.

8 Q. And that's retroactive?

9 A. Yes, ma'am.

10 Q. And is it correct that when you accepted your
 11 position as City Manager, you resigned from your
 12 position as a law enforcement officer?

13 A. Yes, that's correct.

14 Q. And you admit you did not receive any
 15 compensation for being a Police Commissioner?

16 A. I was -- yeah. I was paid as City
 17 Manager.

18 Q. Is it true the City -- is it true the Police
 19 Commissioner position is a non-salaried position?

20 A. It's ex officio, that is correct. I was paid
 21 one salary, one line item forever, even before any --
 22 from 2002 until now, it never changed. One line item,
 23 one salary as the City Manager, yes, that's correct.

24 Q. Now, at the time you were appointed to the
 25 City Manager position, it's true that keeping Special

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1 Risk was very important to you?

2 A. Absolutely. That's why I'm here today.

3 Q. And you admit it was negotiated in your
 4 contract?

5 A. Yes, I did.

6 Q. I think it says -- in your affidavit at the
 7 time you accepted your position, you spoke with the
 8 Police Chief regarding being reported properly to the
 9 Division?

10 A. Not necessarily properly, just to continue to
 11 report me so that I would get high risk, yes, based on
 12 the -- after the Commission meeting, when the
 13 legislature made the decision to do everything as I had
 14 requested, then I made sure -- well, he was there, but I
 15 followed it up with a conversation, of course, and he
 16 knew because he was there at the meeting when the
 17 Commission approved that.

18 Q. And at the time, you said that you knew you
 19 didn't have a personnel or human resources department?

20 A. Yes. I just took the job like in a couple
 21 minutes, so it was pretty --

22 Q. But you didn't have a human resources or
 23 personnel department while you were Interim City
 24 Manager, did you?

25 A. That's correct.

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1 Q. Yet even knowing that, you still didn't call
 2 the Division and ask if you would still be entitled to
 3 Special Risk benefits before accepting the position?

4 A. No, I did not.

5 Q. And at the time you were appointed City
 6 Manager, you didn't notify the Division in any way to
 7 let us know that you were changing positions, did you?

8 A. No, I did not.

9 Q. And to your knowledge, did the City at the
 10 time you moved positions to City Manager, did the City
 11 contact the Division and let us know of your change, to
 12 your knowledge?

13 A. Not to my knowledge.

14 MS. STEVENS: Okay. I don't have any more
 15 questions.

16 MR. SMITH: Just a couple follow up.

17 REDIRECT EXAMINATION

18 BY MR. SMITH:

19 Q. At the time you were named to the City Manager
 20 position, how was your salary changed and how was it
 21 reported? What was the change in the salary you
 22 received on a monthly basis?

23 A. Well, I was -- as Deputy Chief I think I was
 24 making around 54 -- 52, somewhere in that area, and I
 25 think as City Manager it was around 80.

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1 Q. Was that significantly higher than police chief
 2 in the City was making?

3 A. Oh, yeah.

4 Q. At the time the reports were filed which
 5 showed that you were now making significantly more than
 6 a police chief, did anybody from the Department ever
 7 call or make any inquiry as to why you were suddenly now
 8 making \$80,000 prorated monthly for the reports?

9 A. Not to my knowledge.

10 Q. At the time that you were asked a question
 11 regarding your effectively resigning -- I want to go
 12 back to this. At the time you were removed from high
 13 risk by the letter to Gib Coerper from the Department,
 14 at that time had the FDLE even -- had they removed you
 15 from the sworn status?

16 A. That happened later.

17 Q. So at the time they removed you, you were
 18 still listed as a sworn police officer even with the
 19 records of FDLE?

20 A. That's correct.

21 Q. At the time that you found out what the
 22 problem was, were you still after 2002 -- 2007, excuse
 23 me -- after 2002, were you still continuously required
 24 to remain certified even though you were no longer
 25 sworn?

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1 A. That's correct, and I am right now.
 2 Q. So as far as you knew until 2007 you were
 3 being listed both as a police officer and reported as
 4 high risk and no one -- either the city nor the
 5 Department -- ever raised that?

6 A. Not until this incident in --

7 Q. Even after 2004 when the Department
 8 representative was there when you talked about being on
 9 the plan?

10 A. No. They didn't have an issue at that time.

11 MR. SMITH: Nothing further.

12 MS. STEVENS: Just a couple -- just two
 13 follow-up questions. Just two.

14 RECROSS EXAMINATION

15 BY MS. STEVENS:

16 Q. One: Who filed your retirement reports in
 17 2002?

18 A. Maybe Nat Hadsock. When I became the City
 19 Manager, the City was sort of in disarray and a lot of
 20 people just quit at that time. You know, there was some
 21 problems there; so I think Nat Hadsock was the Assistant
 22 Finance Director and he set in. We had sort of a
 23 skeleton crew there for a while. There were some
 24 perceptions that wasn't good for a little bit, but
 25 everything came around, and the community came together,

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1 may not be quite as versed in those areas as they need
 2 to be.

3 Q. Yes, sir. Now, did you pay any on your
 4 retirement at any time, or was the City paying your
 5 retirement from the beginning?

6 A. The City pays the retirement of all the City
 7 employees, none of the employees add anything to that.
 8 You can have your separate retirement if you do, but the
 9 state retirement system and the one we have previously,
 10 the City paid that.

11 Q. Has the State returned, to your knowledge, any
 12 money that you had been paid in on your position?

13 A. I think the State tried to after '07 when this
 14 all happened, but before that, no, sir. And the City
 15 did not accept the voucher. It was a credit that they
 16 sent to the City, and we did not accept that because we
 17 wanted to address all of these issues before this board
 18 before we took any actions.

19 Q. Whatever the reasons were, the communication
 20 between the City of Alachua and the State -- the
 21 Department of Retirement was very disjointed, wasn't it?

22 A. When the City was going through a transition,
 23 things could have been done better.

24 COMMISSIONER DOSTER: Thank you, sir, that's
 25 all.

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1 but it was just a tough time.

2 Q. And --

3 A. I think Nat Hadsock, if I'm not mistaken, and
 4 he was either the Assistant Finance Director at the time
 5 or just a clerk working in the finance department, but I
 6 think he was all left, if I remember correctly.

7 Q. And just one more question. The Division of
 8 Retirement was not a party to any of your employment
 9 contracts, were we?

10 A. No.

11 MS. STEVENS: Thank you.

12 MR. SMITH: Nothing further.

13 CHAIRPERSON MYERS: Mr. Doster, do you have
 14 questions?

15 COMMISSIONER DOSTER: Just a couple.

16 EXAMINATION

17 BY COMMISSIONER DOSTER:

18 Q. Mr. Watson, you described what the situation
 19 was the entire time. You had people employed who were
 20 not properly trained, did you not? I'm talking about
 21 who was taking care of the finances and everything.

22 A. We -- yes, sir, we had some problems as a
 23 small municipality does. We experienced some growing
 24 pains; so oftentimes when you have a small city, you
 25 have a couple of people doing a lot of things, and they

1 EXAMINATION

2 BY COMMISSIONER SEAY:

3 Q. When you left your position as Deputy Chief in
 4 2002, did you fill that position with someone else, was
 5 that position filled?

6 A. Yes.

7 Q. Deputy Chief?

8 A. Yes.

9 Q. And I had a little confusion -- maybe this --

10 you didn't address this in your testimony, that you
 11 should have been given an opportunity to select what
 12 plan you go in or is that not part of this? Is that --
 13 I got the 90-day --

14 A. Right. I didn't, and I wasn't aware at the
 15 time. When the Commission voted me in as the Manager, I
 16 elected to stay in the Special Risk, but I didn't know I
 17 had to do anything other than continue.

18 Q. Could you have stayed at Special Risk at that
 19 point even though you were City Manager? Could you have
 20 elected to remain in Special Risk --

21 A. It was my understanding I could, and the
 22 Commission approved it, and I think it was their
 23 understanding as well. But it's still my understanding
 24 that I can.

25 COMMISSIONER SEAY: That's all.

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1 EXAMINATION

2 BY CHAIRPERSON MYERS:

3 Q. Did you not feel that you had some
 4 responsibility to report to the state retirement your
 5 change of position?

6 A. Madame Chair, I think I could have done things
 7 better. I could have done things better having known or
 8 should have known.

9 Q. I mean, really, did you get these handbooks?
 10 I thought they were sent out to everybody who
 11 participated?

12 A. I have that book, but I -- to be honest with
 13 you, when I start reading that book was '07 when all of
 14 this happened. I'm quite familiar with the book now,
 15 but --

16 Q. Now that your status is ex officio, you really
 17 have no rights other than as a -- to make arrests other
 18 than as a public person. I mean, as a citizen's arrest
 19 or something like that. You have no rights as in the
 20 police capacity?

21 A. That's correct.

22 Q. Okay. What was your main decision to decide
 23 to retire in 2010?

24 A. Actually, I decided to retire in 2008. That
 25 was a pact I had with my family. I do take care of my

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1 disabled mother, and I am looking at other
 2 opportunities, but I was looking at having that little
 3 extra time. I'm one of those 24-hour type employees. I
 4 like to get things done.

5 I had planned to move her in in '08. That's
 6 just something me and my family had decided to do.
 7 She's of ill health, on a breather; so 2008 was
 8 something we planned probably in '04, '06 for me to do.

9 And when this came about, we certainly -- I
 10 had to regroup because I couldn't leave, and at least
 11 until we get some closure here. But now I have other
 12 family members kicking in, so we're okay there, and I'm
 13 looking at other opportunities. I just -- I've been
 14 with the City a long time.

15 Q. Could you go back to the police department; is
 16 that one of your options?

17 A. And that may be something I will be doing even
 18 before I leave in November of next year. I have another
 19 year and a half, and I'm considering certainly if this
 20 is not successful, I will go back as soon as I know --
 21 If I win, I'm retiring. If I don't, I'm going back to
 22 APD at least for the remainder of my tenure, but I am
 23 leaving in November of '10 under all circumstances.
 24 There's some things I have to do.

25 Q. Are you married?

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1 A. I'm divorced. I have five sons. One of my
 2 son's -- my oldest's boy's 32. He's the manager of
 3 Gainesville Nissan. I have one in the university. Two
 4 boys in high school -- bigger than I am, much bigger,
 5 and I have one son who's working at another dealership,
 6 so I have five boys. I wasn't lucky enough to get any
 7 girls, so I have to have grand daughters later, and my
 8 oldest boy has clothes to fist, so that's an awful lot
 9 of clothes going around.

10 CHAIRPERSON MYERS: That's all the questions I
 11 have.

12 Now, do we have other witnesses?

13 MR. SMITH: Yes. I'll go get my next witness.
 14 The Petitioner calls Traci Cain.

15 * * * * *

16 Whereupon,

17 TRACI CAIN
 18 was called as a witness, having been first duly sworn to
 19 speak the truth, the whole truth and nothing but the
 20 truth, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SMITH:

23 Q. And, Ms. Cain, you were previously sworn.

24 A. Yes, sir.

25 Q. State your full name and spell your last name,

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1 please, for the Commissioners.

2 A. Traci Cain, C-a-i-n.

3 Q. And where are you employed?

4 A. City of Alachua.

5 Q. Ms. Cain, where do you reside?

6 A. In Alachua.

7 Q. How long have you resided in Alachua?

8 A. My entire life.

9 Q. And I'm not about to ask you how long that is,
 10 but I will ask you how long you've worked for the City
 11 of Alachua?

12 A. A little over 17 years.

13 Q. And what positions have you held in the City
 14 of Alachua? For instance, when you got hired, what did
 15 you do?

16 A. I was a fiscal assistant. Helped out with
 17 utility billing. Doing some of the financial work.

18 Doing some of the -- there was only about four or five
 19 clerical in the office, and so we handled a lot of the
 20 paperwork and routine clerical stuff.

21 Q. I want this Commission to understand, when you
 22 say there were four or five people, clerical people,
 23 that was for the entire City?

24 A. Yes, sir.

25 Q. And in addition to payroll and that sort of

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1 thing, what other functions did you-all have to carry
 2 out as clerical staff in those days?
 3 A. We did all of the -- the City has a full
 4 service utilities. We service the electric, water,
 5 waste water, garbage collection, and mosquito control
 6 for the City. And, of course, we had to send out all
 7 the utility bills, all the financial documents, public
 8 service related information, you know, all of the
 9 administrative duties that the City would carry out.

10 Q. Do you know, when you were hired, who was
 11 responsible for reporting the retirement for those who
 12 were in the state plan?

13 A. The finance department would have been
 14 responsible for that.

15 Q. Do you know who the in finance department had
 16 that responsibility?

17 A. At the time I was first employed? Probably at
 18 that time, Ellen Everette.

19 Q. What were Ellen's other responsibilities?

20 A. Utility billing, taking calls, taking utility
 21 payments. I mean, there were four people that reported
 22 -- a secretary to the City Manager, someone that was the
 23 secretary to the public services department, and me, and
 24 another clerical staff that basically handled all of the
 25 customer service stuff, all -- she did the payroll, the

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1 accounting, all of that type of stuff.

2 Q. Now, in 2000 were you employed with the City?
 3 A. Yes, sir.

4 Q. What was your position by the year 2000?

5 A. 2000 -- Assistant City Manager.

6 Q. And I won't go through names but between 2000
 7 and 2002, did you serve as -- were you aware that there
 8 was a number of people who held the title of city
 9 manager in the City of Alachua?

10 A. Yes, sir.

11 Q. In fact, was it true from the last person in
 12 2000 until Clovis Watson, he made the fifth person to
 13 hold that title in that period of time?

14 A. That's correct.

15 Q. And one of the people that was hired from out
 16 of town virtually was there for just a matter of months?

17 A. That's correct.

18 Q. Did you actually hold the position for a short
 19 period of time?

20 A. I did. I was Interim City Manager for nine
 21 months.

22 Q. During the period of time that you were the
 23 Interim City Manager, did you know Clovis Watson?

24 A. Yes, sir.

25 Q. What was his position at that time?

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1 A. He was Deputy Chief.
 2 Q. And had you known him to be in the department
 3 for a great number of years?
 4 A. He had been employed since before I was.
 5 Q. Okay. Now, in 2002, did you become aware that
 6 Mr. Watson was named as the Interim City Manager?
 7 A. Yes, sir.
 8 Q. What was your position at the time Mr. Watson
 9 was the Interim City Manager?
 10 A. Assistant City Manager.
 11 Q. And were you the only Assistant City Manager?
 12 A. Yes, sir.
 13 Q. Okay. And as such, do you know in 2002 how
 14 people were being reported of those who were then in the
 15 state retirement system who was doing that?
 16 A. That was being reported by the finance
 17 department still at that time.
 18 Q. And do you know who in Department did it?
 19 A. I believe in 2002 that would have probably
 20 been Nat Hadsock.
 21 Q. Do you have -- do you have any idea that
 22 Mr. Hadsock had any training or whatever? Pension or
 23 pension reporting?
 24 A. No, sir, not to my knowledge.
 25 Q. Can you tell the Commission what -- how the

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1 reports were actually sent from the City, how the
 2 monthly reports were sent as to those employees in 2002
 3 who actually were in the state plan?
 4 A. I believe at that time they already were
 5 electronically sent, so at the end of the payroll at the
 6 end of the month, the City's financial system would
 7 print out a printout with everyone's salaries and the
 8 amount of the retirement contribution.
 9 And then they would go into the Internet to
 10 the FRS web site, and each person would -- was already
 11 listed, and then you would click on that individual
 12 person and key in their salary, and then the computer
 13 would automatically know what the contribution rate was.
 14 We would compare it to our report to make sure
 15 that the amounts were the same, and then submit it
 16 electronically.
 17 Q. And to your knowledge -- at my request -- have
 18 you gone back and reviewed the history of the reports?
 19 What was the reporting code for people who were in the
 20 Special Risk plan in 2002?
 21 A. I believe that is HB.
 22 Q. And were you aware that Mr. Watson continued
 23 in HB after 2002?
 24 A. Yes, sir.
 25 Q. Now, you actually -- when Mr. Watson came into

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1 office, did you take on another status? At first, did
2 you leave the City for a period of time?

3 A. I did. I was out on medical leave. I was
4 pregnant and out on FMLA for several months.

5 Q. Do you know -- when you were out as the
6 Assistant City Manager, and Mr. Watson took office, do
7 you know -- it was still in the finance department at
8 that time, correct?

9 A. It was. The finance director also left around
10 that same period.

11 Q. Now, do you know who or if anybody in the
12 Department ever changed the method of filing
13 Mr. Watson's reports?

14 A. I know that no one changed the method, no.

15 Q. Now, when did you return to the City?

16 A. I actually went back to work in June of 2003.

17 Q. Did you remain there until 2007? Were you
18 there continuously --

19 A. Oh, yes.

20 Q. -- from 2003 to 2007?

21 A. Yes.

22 Q. In that interim, was there a time in which the
23 City of Alachua changed -- made a major change as it
24 related to their relationship with the Florida
25 Retirement System?

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1 A. Yes, sir. One of my main goals and one of --
2 what the City Manager asked when I came back was that --
3 we had been a member of the Florida League of Cities
4 since 1996, and any new employees hired since 1996 were
5 with the Florida League of Cities' retirement plan, and
6 any employees hired prior to that were with the Florida
7 Retirement System, and we had decided to try to
8 reinstate our membership into the FRS for all of our
9 employees.

10 Q. Did that happen?

11 A. That did happen.

12 Q. Did you communicate on behalf of the City with
13 the Department?

14 A. Yes, sir.

15 Q. With the Division, excuse me.

16 In particular, do you know -- was a
17 representative or representatives of the Division, did
18 they actually come and visit with the City?

19 A. Yes, sir. We had our -- I remember Mr. Andy
20 Snuggs came and did a presentation to our employees
21 before we actually rejoined the Florida Retirement
22 System to give our new employees and the older
23 employees -- tell them about both plans, the pension
24 plan and the investment plan, and tell them what their
25 options were before they joined.

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1 Q. Do you know -- and do you have records at my
2 request that you reviewed that you communicated in
3 writing with Mr. Snuggs and the Division during 2004 on
4 more than one occasion?

5 A. Yes.

6 Q. And in each occasion, who was listed as the
7 City Manager?

8 A. Mr. Watson.

9 Q. And at the meeting, were you present when
10 Mr. Watson talked about with Mr. -- the presence of
11 other employees about being on Special Risk?

12 A. Yes. I actually introduced him to Mr. Snuggs.

13 Q. And after 2004, did anyone raise a question --
14 or did you have any issue from the Department regarding
15 the fact that he was the City Manager/Police
16 Commissioner and still on the State's high risk
17 retirement?

18 A. I had no communication.

19 Q. Have you at my request gone back and reviewed
20 the personnel file of -- and actually prepared and
21 submitted the personnel file of Mr. Watson?

22 A. Yes.

23 Q. Is that the entire file of Mr. Watson?

24 A. Yes.

25 Q. In your review of that or any other documents

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1 related to retirement, has Mr. Watson -- to your
2 knowledge, had he ever been notified prior to June 28,
3 2007 that he needed do anything regarding his
4 retirement?

5 A. Not to my knowledge.

6 Q. I want to go back -- I know you left at the
7 time Mr. Watson came in for a period of time on
8 pregnancy leave, but I want to back up for a moment.

9 Were you aware of -- were you present at the
10 City Commission meeting when Mr. Watson was appointed as
11 -- and accepted the position as Interim City Manager?

12 A. I was not at the meeting when he was Interim
13 City Manager.

14 Q. How about permanent?

15 A. Yes, sir.

16 Q. And were you aware that Mr. Watson expressed
17 to the Commission and the Commission agreed that he had
18 certain things that he would require before he would
19 take on or retain that position?

20 A. Yes, sir.

21 Q. And tell the Commission what Mr. Watson's
22 biggest concern was.

23 A. That he remain in high risk and stay
24 certified; that that was very important for him for the
25 years that he had already put into the police

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1 department. I mean, he and I actually had conversations
2 about that prior to him accepting the position.

3 Q. When he was named the City Manager/Police
4 Commissioner, had anyone in the City ever held that
5 title before?

6 A. No, sir.

7 Q. Do you know -- and did the Commission express
8 why they were having the additional title "Police
9 Commissioner" attached to Mr. Watson's name?

10 A. To show that they wanted him to remain
11 certified and be very much involved in the police
12 department and the every-day operation of the police
13 department because he had for so many years.

14 Q. Ms. Cain, since 2002, from your attorney --
15 excuse me, in 2003, have you had an opportunity to
16 observe Mr. Watson's involvement in the day-to-day
17 operations of the Alachua Police Department?

18 A. Definitely.

19 Q. Are there city managers now in the City
20 besides yourself -- assistant city managers besides
21 yourself?

22 A. There is one additional assistant city
23 manager.

24 Q. And do you have specific -- each of you have
25 specific assignments as you supervise certain

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1 starting as early as June of 2002 and continuing
2 actually to date involving Mr. Watson's employment?

3 A. Yes, sir.

4 Q. Isn't it true that in each of those occasions
5 Mr. Watson has been required to retain his certification
6 and remain directly involved in the police department in
7 order that he would be eligible for reinstatement at his
8 direction or the City's direction?

9 A. Yes, sir.

10 CHAIRPERSON MYERS: Mr. Smith, we have heard
11 all of this before.

12 MR. SMITH: Okay. Well, I just don't want it
13 to come back later that I've only had it through --

14 CHAIRPERSON MYERS: This is repetitive.

15 MR. SMITH: As long as that's your position,
16 I'm fine with it, but I don't want anybody later
17 saying I only put on the witness himself. I'm
18 always careful about somebody saying he's
19 self-serving, so I want to make sure.

20 CHAIRPERSON MYERS: It's gone on long enough.

21 MR. SMITH: Good. Me too.

22 BY MR. SMITH:

23 Q. Have you, at my request, gone back and
24 computed the impact of the City of what they would have
25 to pay Mr. Watson if he is disallowed this retirement?

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1 departments?

2 A. Yes.

3 Q. Do either of the you supervise the police
4 department?

5 A. No, sir.

6 Q. Why is that?

7 A. He was to remain directly under the City
8 Manager.

9 Q. He meaning the Police Chief?

10 A. The Police Chief.

11 Q. Are you aware that Mr. Watson has been
12 actively involved in decisions regarding both the police
13 department and police operations since you've returned?

14 A. Yes, sir.

15 Q. Ms. Cain, as you have gone back and reviewed
16 the files of the City at my request as well as the
17 personnel file, has the City or anyone -- had anyone
18 required of Mr. Watson to do anything about his
19 retirement that is reflected in any of the records of
20 the City or the records of Mr. Watson prior to his being
21 notified in June 2007 that he was removed from the
22 Special Risk plan?

23 A. No, sir.

24 Q. Have you had an opportunity -- are you aware
25 that there have been a series of contracts with the City

1 MS. STEVENS: Objection. I don't see how what
2 the City has to pay is relevant to the entitlement
3 to Special Risk benefits.

4 MR. SMITH: I think when we go to the issue of
5 the equities, and this commission is
6 specifically -- Hickey being the case I most
7 recently cited to you, but there are several cases
8 where this City -- this Commission has said, Your
9 role is also to try to do the fair thing in light
10 of all the circumstances.

11 I believe it's important that people
12 understand that this City unknowingly has exposed a
13 small town for a huge liability to make up for the
14 shortfall of his retirement.

15 CHAIRPERSON MYERS: Well, I think that's
16 between the Petitioner and the City of what
17 agreement they have; that, unfortunately, if
18 somebody made a mistake, that's their fault, and we
19 cannot rectify that, and so it is not a part of our
20 decision.

21 BY MR. SMITH:

22 Q. Let me try a question a different way. In the
23 event that Mr. Watson is continued in the Special Risk
24 Retirement, does the City incur any additional liability
25 if he is allowed to continue in it?

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1 A. In the --
 2 Q. Special Risk.
 3 A. No. We've been contributing at Special Risk.
 4 Q. And has the City accepted any money or
 5 vouchers in terms of refunds from the Department as it
 6 relates to Mr. Watson's -- those contributions made on
 7 behalf of Mr. Watson --
 8 A. We receive a credit invoice monthly; however,
 9 we have not taken that credit invoice on any of our
 10 monthly contributions.

11 Q. Because somebody else asked the question
 12 earlier, at the time -- from 2002 to 2003, 2004, those
 13 years -- were you aware of whether or not anybody in the
 14 City had any specific assignment and training in
 15 retirement other than part of many other duties they
 16 perform?

17 A. Specific training, no, sir, no.

18 Q. As a matter of fact, until you were rehired in
 19 2003, there wasn't a personnel department or a human
 20 resources department?

21 A. No.

22 MR. SMITH: Nothing further.

23 * * * * *

24 CROSS-EXAMINATION

25 BY MS. STEVENS:

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1 Q. Just a couple questions, Ms. Cain. How are
 2 you doing?
 3 A. Good. Good.
 4 Q. That's good. At the time Clovis was appointed
 5 to City Manager, you said you were the Assistant City
 6 Manager, correct?
 7 A. Correct.
 8 Q. And to your knowledge, did anyone from the
 9 Division -- excuse me. You're now in charge of
 10 retirement reports; is that correct?

11 A. Correct.

12 Q. Do you have any special training?

13 A. I have not received any special training. I
 14 don't actually submit the reports. My assistant does.

15 Q. But you're in charge of the retirement
 16 reports?

17 A. Yes.

18 Q. Do you know if your assistant has any special
 19 training?

20 A. No.

21 Q. Do you know what is supposed to happen when a
 22 Special Risk employee changes positions?

23 A. Yes.

24 Q. And what is that?

25 A. If they are not in -- now, I know this now --

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1 that if they're not in a position that is listed, one of
 2 those positions that are qualified that are already
 3 listed, that an application would need to be filled out.
 4 Q. Do you know whether a city manager is one of
 5 the listed positions?
 6 A. I do not think it is.
 7 Q. And what you just said was supposed to happen,
 8 did that happen with Mr. Watson?
 9 A. It did not happen, but we were currently -- at
 10 that time, we were not with the Florida Retirement
 11 System for any new employees; we were with the Florida
 12 League of Cities. And all of our new hires for the
 13 previous, probably, eight years prior to that, we had
 14 gone to the Florida League of Cities in 1996, so anyone
 15 that we were hiring prior to that, we were reporting all
 16 of our new hires to the Florida League of Cities.
 17 Q. But you still had FRS employees?
 18 A. Correct.
 19 Q. And you were still reporting them monthly to
 20 the Division?
 21 A. Correct.
 22 Q. And you still had the FRS Employer Handbook?
 23 A. Correct.
 24 Q. And in the FRS Employer Handbook, it states
 25 which positions are the preapproved class codes that you

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1 can report under HB?
 2 A. Correct.
 3 Q. And you did not do that -- or not you -- the
 4 City did not do that at that time even though they had
 5 that information?
 6 A. It was not done.
 7 Q. The Petitioner has the authority to terminate
 8 you, doesn't he?
 9 A. Certainly. I'm an at-will employee.
 10 Q. And he's actually terminated you before,
 11 hasn't he?
 12 A. Yes, he has.
 13 Q. Now, you said you were a City Manager. When
 14 you were a City Manager, were you reported under the
 15 Senior Management Service Class?
 16 A. Yes, I had been, because I was an Assistant
 17 City Manager before that.
 18 Q. Was that negotiated into your contract?
 19 A. The Senior Management?
 20 Q. That's correct.
 21 A. No. That was -- just continued because I had
 22 been an Assistant City Manager prior to that and was
 23 only an interim. They were actually looking for a city
 24 manager. They were doing a national search.
 25 Q. Now, I think you talked briefly about there

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1 being two assistant city managers, and Mr. Watson being
 2 directly over the police department, and the city
 3 managers were directly over everybody else; is that what
 4 you said? Am I characterizing that correctly? Please
 5 tell me if I'm not.

6 A. That was reassignment in November, yes, ma'am.

7 Q. November of 2008?

8 A. Yes. Yes.

9 Q. So before that that wasn't the case?

10 A. There was only one assistant city manager
 11 before that.

12 Q. Are you familiar with organizational charts?

13 A. Yes.

14 Q. Was the organizational chart changed in
 15 November of 2008?

16 A. Yes.

17 Q. Prior to the change in November of 2008, did
 18 it list Mr. Watson as head of every department within
 19 the City?

20 A. Prior to 2008?

21 Q. I'm sorry. Prior to November of 2008.

22 A. Yes. I would think that it listed him over
 23 everybody.

24 Q. And then in November of 2008, shortly before
 25 this hearing, the organizational chart was changed,

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1 it's embedded.

2 MS. COCHEU: But it's easier when you have
 3 questions when you want to --

4 MR. SMITH: I agree. I agree. I just have a
 5 few follow-up.

6 REDIRECT EXAMINATION

7 BY MR. SMITH:

8 Q. You were asked about you were aware now how it
 9 works. Before all of this came up, were you aware of
 10 any of the responsibilities that were required of
 11 somebody who went into Special Risk?

12 A. I was not.

13 Q. Do you know of anybody in the City that knew
 14 about any of that?

15 A. No.

16 Q. Now, I want to make sure this is clear. When
 17 you say that Mr. Watson never received an election, have
 18 you ever had anybody in the City get a choice to elect
 19 to go into -- or remain in the plan?

20 A. To remain in the plan --

21 Q. Or to stay in the Special Risk plan? Have you
 22 ever gotten any information from the Division regarding
 23 somebody's coming into Special Risk -- into the City and
 24 changing their status?

25 A. Recently when we hired a new chief.

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1 wasn't it?

2 A. It was changed, yes.

3 Q. And then now it has Mr. Watson directly over
 4 the police department and two assistant city managers?

5 A. Yes, ma'am.

6 MS. STEVENS: I have no other questions.

7 MR. SMITH: I have a couple follow-up.

8 CHAIRPERSON MYERS: Before you do, we have to
 9 ask the Board before you do follow-up.

10 MR. SMITH: Sure. We didn't do it that way
 11 last time.

12 CHAIRPERSON MYERS: Because you jumped in, we
 13 let you go.

14 COMMISSIONER SEAY: We change as we go.

15 MR. SMITH: Fine with me.

16 CHAIRPERSON MYERS: I was going to jump in,
 17 but then I let you go ahead.

18 MR. SMITH: Fine with me.

19 CHAIRPERSON MYERS: Mr. Doster, do you have
 20 any questions?

21 COMMISSIONER DOSTER: No.

22 COMMISSIONER SEAY: I don't have any
 23 questions.

24 CHAIRPERSON MYERS: I actually don't have any
 25 questions. We've gone over all this so many times

1 Q. What happened?

2 A. I received -- we reported him as Special Risk,
 3 and because he had come from the sheriff's department of
 4 the county, I was sent stuff from the retirement that we
 5 had to apply for the position because the Chief of
 6 Police position was not a preapproved position.

7 Q. And that was sent to the City and to the
 8 employee by the Division?

9 A. Yes.

10 Q. You were asked about Mr. Watson having the
 11 ability to fire you. Describe for this Commission your
 12 relationship with Mr. Watson.

13 A. We've always had a very good relationship.

14 During the time when city manager -- was first appointed
 15 as the city manager, the City was going through a very
 16 difficult time. We had had five different city managers
 17 within two years. There was a lot of -- the City was
 18 growing. We had a lot of dissension in the City. I was
 19 out on leave.

20 We had several employees -- about eight at the
 21 time out of less than a hundred employees, probably less
 22 than 90 employees actually -- that had left the City.

23 We had a consultant in that was our finance
 24 director, and I believe that she had misled him in many
 25 ways, and I was terminated while I was out on leave as a

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1 key employee under the FMLA.
 2 In the end of December, hired back. Clovis
 3 called me on his own and said that he had made a
 4 mistake, and that he wanted me back. I had been with
 5 the City at that time for probably 12 or 13 years, and
 6 we had always been very close, and that he wanted me to
 7 come back to the City and be the Human Resources
 8 Director and start the Department up, and that, you
 9 know, wanted everything to start over, and we've had a
 10 great relationship ever since then. There's been no
 11 problems.

12 Q. You were asked about the City organization
 13 chart, the City organizational chart that was done in
 14 November of 2008. To your knowledge, was anything in
 15 that organizational chart structured differently as it
 16 related to now you have the two city managers? Did that
 17 have anything to do with this case to your knowledge.

18 A. No, I was actually -- I actually received a
 19 promotion at that time. I was the Human Resources
 20 Director, and I was promoted to Assistant City Manager
 21 and taking on the planning and community development,
 22 which consisted of our planning, our building, our codes
 23 enforcement, our recreational department, IT department,
 24 and administrative services department; so it was
 25 something to -- you know, just reorganize the City and

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1 Q. But we -- the Division had received
 2 information regarding his position; is that correct?
 3 A. No. Received -- his salary had been keyed in.
 4 He had been keyed in as a new employee.
 5 Q. A new employee?
 6 A. Right.
 7 Q. And he was not currently an employee with your
 8 agency?
 9 A. That's correct.
 10 Q. Is that correct?
 11 A. Yes, ma'am.
 12 MS. STEVENS: Thank you. I have no further
 13 questions.
 14 CHAIRPERSON MYERS: You can stay in the room
 15 if you want.
 16 (The witness was excused.)
 17 * * * * *

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1 try to make things run more efficiently; so I was
 2 actually given a promotion and that is why that
 3 happened.

4 MR. SMITH: Nothing further.

5 RECROSS EXAMINATION

6 BY MS. STEVENS:

7 Q. Just one follow-up question or one follow-up
 8 issue, I guess. You just spoke about the election that
 9 Mr. DeCoursey --

10 I believe he's your current Chief of Police?

11 A. Yes.

12 Q. -- the election he received, what type of an
 13 election was that?

14 A. For Special Risk.

15 Q. And was the Division notified of this
 16 individual being the Chief of Police with your agency?

17 A. Not originally. I believe that he was just
 18 reported. His salary was reported, and because his
 19 Social Security number was in the system in the county,
 20 it was probably around the exact same time he left the
 21 county and came straight to the City; so we were sent
 22 information that he had to apply for the Special Risk,
 23 and we filled out all the necessary paperwork that
 24 needed to go with that and sent it in, and he was
 25 approved.

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